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REASON

Free Minds and Free Markets®

December 1997

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By Steven Hayward

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- John J. Pitney on campaign coverage
- Michael Greve on Scalia's textualism
- Charles Paul Freund on the conspiratorial mind

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The anti-gambling movement's ideologist-in-chief
By Robert Detlefsen

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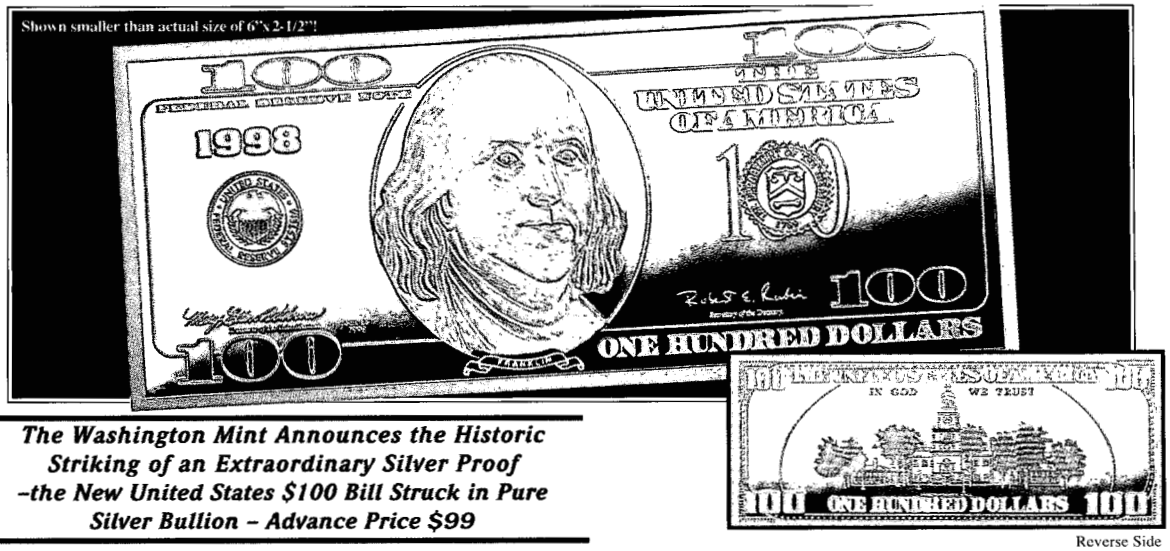

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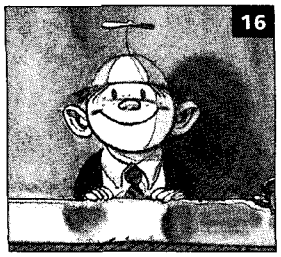

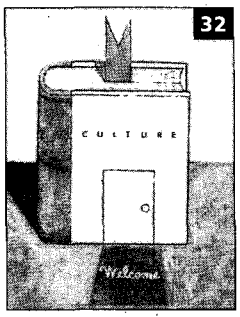

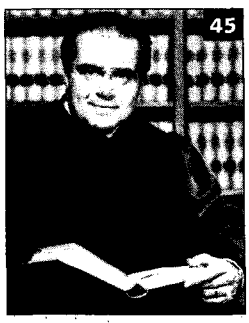

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The Croly Ghost

Exorcising the specter haunting American politics

By Virginia I. Postrel

Herbert Croly is not exactly a household name, but he should be. Seven decades after his death, we are still living in the political world his ideas built—and struggling to escape it.

Croly did two very important things: He wrote *The Promise of American Life*, published in 1909, which crystallized the thought of the Progressive movement as it assumed significant, multiparty political influence. And, five years later, he founded *The New Republic*, which gave—and gives—voice to those ideas.

Croly's central message was that the government's job is to solve social problems and to actively shape the future, not to be a neutral referee. "To conceive of a better American future as a consummation which will take care of itself,—as the necessary result of our customary conditions, institutions, and ideas,—persistence in such a conception is admirably designed to deprive American life of any promise at all," he wrote. Croly's ideas influenced, among other contemporaries, Theodore Roosevelt and Woodrow Wilson, political rivals who in retrospect had more fundamental agreements than differences.

Crolyism overturned the ideal of limited government in favor of a combination of elite power—commissions to regulate and plan—and mass democracy. It was this pragmatic progressivism, not socialist utopianism, that extinguished classical liberalism as the general philosophy of American government. Frustrated with constitutional limits, Croly wrote, "The security of private property and personal liberty, and a proper distribution of activity between the local and the central governments, demanded [at the time of the Constitution's framing], and within limits still demand, adequate legal guarantees. It remains none the less true, however, that every popular government should in the end, and after a necessarily prolonged deliberation, possess the power of taking any action, which, in the opinion of a decisive majority of the people, is demanded by the public welfare." This statement, while extreme, pretty much sums up today's governing philosophy.

In Crolyism, we find the assumptions that underlie just about every current political debate: Government is supposed to pick sides and solve problems. The only questions are which sides and how. When that most conventional of Washington columnists, Morton Kondracke, writes that "the solution [for Republicans] lies in the same place that Clinton found victory in 1996: centrist problem-solving," he is affirming the Crolyist creed.

So, far more explicitly, are *Weekly Standard* editors William Kristol and David Brooks when they declare in *The Wall Street Journal*, "Wishing to be left alone isn't a governing doctrine....What is missing from today's conservatism is the appeal to American greatness." By their own admission, Kristol and Brooks have only the haziest of agendas: "It would be silly to try to lay out some sort of 10-point program for American greatness." They simply know what they want to quash—the idea that American greatness is emergent, rather than planned, and that it does not emerge from Washington. "American purpose," writes Brooks, "can find its voice only in Washington."

"As long as Americans believed they were able to fulfill a noble national Promise merely by virtue of maintaining intact a set of political institutions and by the vigorous individual pursuit of private ends, their allegiances to their national fulfillment remained more a matter of words than of deeds," wrote Croly. Echoes Brooks in the *Standard*, "If they think of nothing but their narrow self-interest, of their commercial activities, [Americans] lose a sense of grand aspiration and noble purpose." Like Croly, Brooks wants to crush the idea that government's job is simply to maintain free institutions and to let Americans, as individuals and in association, do the rest.

As Jim Glassman and I have written elsewhere, such conservatives have trouble finding American greatness because they are deeply alienated from the textures of American life—from the private activities in which Americans express grand aspirations and noble purpose. (See " 'National Greatness' or Conservative Malaise?," *The Wall Street Journal*, September 25, available at www.reason.com/opeds/malaise.html.) They view America as a rotten society, whose very creativity and exuberance is a cause for dismay.

But Kristol and Brooks are on to something: We do need to talk about governing doctrines. For the first time since Croly's era, we are at an inflection point in American politics, a time when the fundamental definition of what politics is all about could change. This redefinition is not a matter of party realignment but of big ideas. America's Crolyist assumptions are no longer secure.

Like the change in Croly's time, this inflection point is a product of intellectual and political trends over several decades. Belief in the practical power of technocracy has steadily declined, among both elites and the general public, since the mid-1960s. The old habit of "got a problem, get a program" remains, but enthusiasm for those new programs died in a gas line sometime during the Carter administration. From urban renewal in the late '50s to the S&L bailouts of the 1980s, Crolyism has not delivered on its grand promises.

As government has grown and special interests have multiplied, bureaucracies that once seemed to function reasonably well have become decadent, rigid, and insulated: Until the late 1950s, muses Nathan Glazer in *The New Republic*, the New York City public schools did a good job. What happened? Glazer tepidly blames the '60s, missing dynamics that political scientists find just about everywhere. It's hard to explain the high-handed in-

competence of the U.S. Postal Service—and the contrasting competence of FedEx and UPS—by invoking the counterculture. NASA's sluggishness has nothing to do with hippies.

As the recent Senate hearings on the IRS revealed, picking sides and solving problems also means treating Americans not as equal citizens but as unequal subjects. A Crolyist government has a natural but nasty tendency to abuse its citizens. Its governing doctrine has a touch of the dominatrix. "The Promise of American life," wrote Croly, "is to be fulfilled—not merely by a maximum amount of economic freedom, but by a certain measure of discipline; not merely by the abundant satisfaction of individual desires, but by a large measure of individual subordination and self-denial."

After 70 years of increasing subordination, it's no wonder "leave us alone" is a slogan appealing enough to unite, on occasion, an unruly coalition of libertarians and social conservatives. As long as Crolyism is still generating new schemes—Internet censorship, HMO regulation, smoking bans, manipulative tax credits, endless databases and ID cards, mandatory "voluntary" TV ratings, etc., etc., etc.—simply saying *no* is a serious, and necessary, political position. (The failure of the Republican "leave us alone" coalition is evident in these examples, since social conservatives ardently support about half these laws.)

As slogans go, "leave us alone" is not bad: It suggests that there is something precious and vital in private pursuits, something that is threatened by a government bent on subordination. Not so good is "government doesn't work," which, along with variations on the same theme, is popular in libertarian circles. At the very moment when Crolyism is vulnerable, such anti-government sloganeering accepts and reinforces a Crolyist definition of "government" as synonymous with the unlimited administrative state. It thereby jettisons the entire classical liberal tradition—which is very much supportive of "government" properly constrained—in favor of a vague anarchism. As an alternative to Crolyist subordination, "government doesn't work" offers the Hobbesian state of nature. That is exactly what Croly's many heirs, on both the right and the left, want people to see as the choice.

Crolyism was not built on slogans, and it cannot be displaced by them. A new governing doctrine, like the old one, requires two components: an inspiring vision of private life and a sophisticated vision of government. Fortunately, both of these visions exist. The challenge is to develop and communicate them.

America is an amazing place: creative, generous, and productive, with so many cultural nooks and crannies that no one can comprehend them all. Ours is a country whose greatness lies in its plenitude, the sheer diversity of niches—business, cultural, artistic, stylistic, intellectual, athletic, philanthropic, technical, you name it—it continuously creates and fills. (I owe the apt term *plenitude* to anthropologist Grant McCracken's book by that name, available at www.cultureby.com.) Plenitude is exciting, fun, stimulating, cool. It allows more people to be happy more of the time. It defies rigid status categories, whether "traditional" or "multicultural," in favor of the fluidity of choice and contract. It is a source of progress and competition, of the essential variations in the evolution of a dynamic civilization.

Crolyism despises plenitude. As a governing doctrine, it is inherently intolerant, demanding conformity to a central purpose. "In becoming responsible for the subordination of the individual to the demand of a dominant and constructive national purpose," wrote Croly, "the American state will in effect be making itself responsible for a morally and socially desirable distribution of wealth." To the distribution of wealth, we can add a host of other private matters, from the correct relation between employers and employees to the intimate structures of family life to the proper forms of art. In a Crolyist state, the National Organization for Women can imagine no way to peacefully coexist with the Promise Keepers—for one vision or the other must define the "dominant and constructive national purpose."

Classical liberalism, by contrast, was built on the idea of peaceful coexistence. It evolved as an alternative to unceasing religious wars. Its 21st-century version—which emphasizes dispersed knowledge, competition and feedback, and evolutionary learning, as well as personal freedom—is the only political philosophy that makes room for plenitude. "There *is* a common culture that unites the world of plenitude," McCracken writes coyly. "It is, I think, and this will please no one, the marketplace. This is the great lingua franca of the contemporary world. As long as we can meet somewhere in the exchange of something for the benefit of someone, we have a foundation that can sustain plenitude."

The question, then, is how to sustain in turn the foundations of the marketplace—such free institutions as property rights, contract, the rule of law, and freedom of conscience and expression. This is not an easy question, which is why it is so often finessed with slogans. It actually has several components: how to move toward freer institutions, how to protect them, and how to define them. What exactly is meant by "property rights" or "the rule of law" is not obvious in every context—What about commons? Spillover effects? Intellectual property? Incomplete contracts?—nor is the relation between legal institutions and cultural habits and beliefs.

By dismissing free institutions as annoying impediments to political action, Crolyism has pushed such fundamental issues out of public view. But scholars have continued to think about them. As a serious intellectual movement, classical liberalism is not only as vibrant as ever, it has become downright trendy. The questions it asks are interesting, deep, and practical, a sure recipe for scholarly attention.

In mid-September, a remarkable conference was held at Washington University in St. Louis, the first meeting of the International Society for the New Institutional Economics. NIE builds on the work of two Nobel laureates, Ronald Coase, who has asked such basic questions as, "Why are there firms?," and Douglass North, who asks why some economies have grown faster than others and examines how they developed the institutions that permitted that growth. With no advertising except the society's Web site (sykuta.business.pitt.edu/NIE), the conference organizers expected 40 or 50 attendees; they had to close registration at more than 200, from 20 countries and all the social sciences.

The NIE conference was testimony not only to the power of cyberspace to nurture international communities but also to the

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vitality of serious alternatives to Crolyism (even at the World Bank, where NIE-inspired researchers are actually pondering such issues as "the sources of secure property and contractual rights"). Conventional political discourse continues to define *government* as the manipulative determiner of national purpose, but the twin challenges of Third World development and postcommunist transition have revived the fundamental insight of classical liberalism—the idea that government best serves its citizens by limiting itself to enforcing neutral rules. Figuring out how to turn that insight into policy is both an intellectual and a political challenge. But the idea itself is a "governing doctrine" worthy of American greatness.

Complexity Theory

If the IRS is abusive, the tax code is worse.

By Rick Henderson

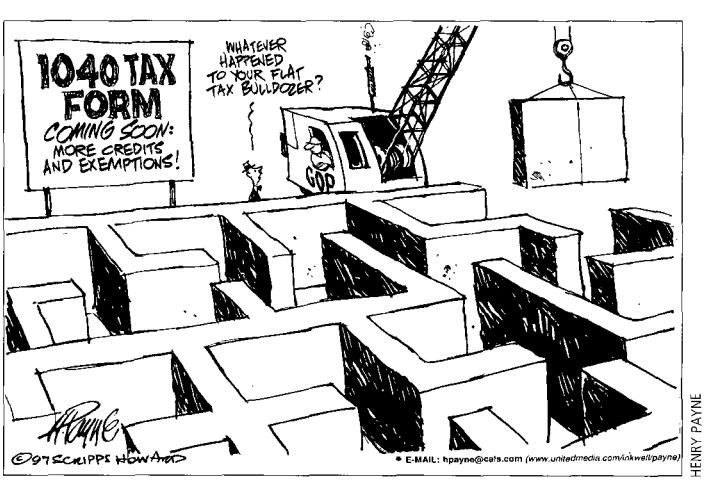
A California woman spends 17 years fending off attempts by revenue agents to take her family's property because the Internal Revenue Service issued her husband's optometry practice an incorrect account number. A Florida priest fights IRS agents who try to swipe $18,000 from a trust fund for the poor because he filed the wrong form.

The Senate Finance Committee's hearings on IRS abuses gripped our attention in ways the campaign hearings never have. Chairman William Roth (R-Del.) did a brilliant job selecting telegenic witnesses who could tell riveting stories. And it's easier to make villains out of revenuers than it is to convince people that the fund-raising phone calls Al Gore made from his office were criminal, even if the vice president really did break the law.

It's always healthy when abusive actions by government officials generate outrage. Yet many of the abuses highlighted before the finance committee—for which the responsible agents and managers deserve punishment—were the direct consequences of the actions of Congress, including the very senators who convened those hearings. The IRS is a capricious agency because its mission is to enforce a tax code which does not treat citizens as equals before the law. Barney the Dinosaur could become the commissioner of revenue, but as long as the government remained huge and the tax code complicated, the IRS would still act in outrageous ways.

Consider the tax package that same Senate Finance Committee passed this summer. It contains more than 1,000 changes in the Internal Revenue Code, so many alterations that next year's 1040 form may expand to three pages. At the IRS hearings, New York Sen. Daniel Patrick Moynihan, the senior Democrat on the committee, noted that this year Congress added more than 800 pages to the tax code, which now numbers more than 9,400 pages. And every time the tax code is tweaked—even if the change results in a tax cut—the law becomes more complex and the IRS gains new opportunities for mischief and mistakes.

For instance, Congress cut capital gains rates this summer. The top rate will fall



from 28 percent to 20 percent—if you hold an investment for at least 18 months. But let's say you sell a mutual fund 17 months and 28 days after buying it, and you made a hefty profit on the deal. What's to prevent you from claiming the 20 percent rate on your tax return? The IRS. That's its job. And if you're audited, the IRS agent working on your file will demand plenty of documents that make it clear you didn't cut corners on still other occasions.

And if you or your children are considering college, you have three new tax breaks to ponder: tax credits for tuition, tax-free savings accounts, and a deduction for the interest on college loans. Each demands documentation, and qualifications vary with marital status and income—still more opportunities for things to go wrong. It's no surprise the IRS plans to add at least 10 pages to the 51-page instruction booklet that accompanies 1040 forms.

The federal treasury will collect and spend around 20 percent of Americans' incomes next year. If the tax code were simply designed to collect that money as efficiently as possible—say, through a single-rate income or consumption tax—tax collectors would still need significant powers to enforce the law. But the political class has created a tax code that is an exercise in social engineering. It treats individual Americans unequally based on the amount of money they make, the professions they choose to pursue, or the decisions they make about spending or saving their earnings. Those inequities create room for abuse that go beyond the coercion necessary to enforce a code as simple as, say, the flat tax.

To his credit, Roth has been a longtime advocate of tax simplification, going back to the original Kemp-Roth tax cuts he helped develop 20 years ago. And House Ways and Means Committee Chairman Bill Archer (R-Tex.), who will convene his own hearings on the IRS this fall, wants to replace the income tax with some type of consumption tax. But their colleagues seem more interested in tinkering around the margins.

"It is important to point out that a great deal of the problems of the IRS come about because of legislation we ourselves have passed," Moynihan said at the hearings. Until Congress radically simplifies the tax code, these problems will continue. ◆

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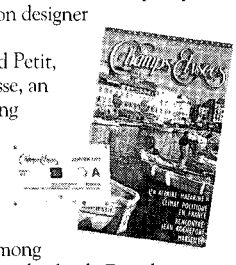
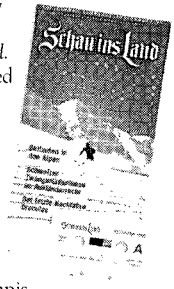
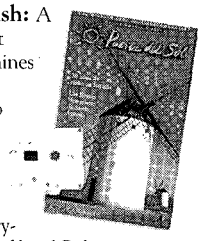


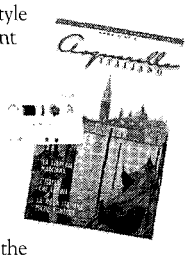
***Schau ins Land* in German:** Professional journalists in Germany, Austria, and Switzerland provide a fascinating overview of German-speaking Europe every month in *Schau ins Land*. Recent programs have included profiles of Austria's new chancellor Viktor Klima and industrialist Ferdinand Porsche, visits to Berlin's Scheunenviertel and Lake Constance, a two-part feature on the history of Zeiss Optics, and interviews with conductor Kurt Masur and tennis ace Boris Becker.



***Puerta del Sol* in Spanish:** A talented group of broadcast journalists in Madrid examines the colorful textures of Hispanic culture every two months in *Puerta del Sol*. Interviews with Spanish prime minister José María Aznar and NATO secretary-general Javier Solana, a profile of Cuban ballerina Alicia Alonso, and a feature on Spanish sparkling wine are just a sample of the intriguing segments on recent editions of this Spanish-language audiomagazine.



***Acquerello italiano* in Italian:** Produced six times a year in Rome, *Acquerello italiano* showcases the vitality and style of contemporary Italy. Recent programs have included interviews with film director Mario Monicelli and politician Mario Segni, as well as features on educational reform in Italy, the reopening of the Doria Pamphilj Gallery in Rome, the impact of the Albanian crisis on Italy, and Naples's underground world.



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Airing Differences

Once again REASON delights. Michael Fumento's "Polluted Science" (August/September) is excellent for both its content and its clear writing. The exposure of the nonsense that is Carol Browner's position was excellent.

The proliferation of numbers (frequently conflicting) cited by Fumento is typical of legal and political advocacy, and exemplifies the uncertainty that inevitably accompanies big decisions. In politics those in power inevitably win arguments about numbers because they can implement their policies despite well-reasoned objections. Even when faced with the abundant evidence, they simply do not admit to uncertainty about the results of their proposed policy. It is not necessary, nor is it good science, to base regulations on the most extreme estimates. Because the EPA does not consider uncertainty, it is forcing us to make a bad bet. Without consideration of the uncertainty, we don't know how bad the bet is.

The EPA can effectively bet with someone else's money—our money. It can force this bad bet on companies and state and local governments with no accountability for the outcomes. The EPA doesn't have to provide funds to implement its new regulations.

The money diverted to meeting these new regulations will be unavailable for improving health coverage, providing day care, or other voluntary expenditures that might directly benefit individuals and communities. The sensible trade-offs that we might make locally will never occur to the EPA, but the EPA can certainly prevent them with its regulations. Here's hoping Congress can force Ms. Browner to take aim before firing.

Glenn Niblock
Vertex Associates Inc.
San Diego, CA

Michael Fumento's article seems reasonable at first sight but fails to recognize the nature of the problem we face with regulation of air pollution and, in particular, the hazard of fine particulates.

Fumento notes that the EPA thinks "a mere 5 percent to 10 percent apparent increase in risk is enough to justify foisting new regulations on the public." During the past 20 years, the EPA has implemented many regulations to reduce a hypothetical risk of 0.0001 percent. Indeed, if the risk of particulates averaged over all Americans is the several percent that many scientists believe, then the new fine particulate regulations will improve public health more than the sum total of all EPA regulations to date. The EPA could not ignore such a problem, even though the proof is less than ideal.

Moreover, the reliability of this calculation is greater than the reliability of most of the EPA's risk calculations. Unlike with many pollutants the EPA regulates, we are sure that air pollution at high levels has killed people (not merely rodents). Four thousand five hundred "excess deaths" occurred in London in the air pollution incident of December 1952. But scientists have been arguing for 45 years about two questions: First, if the pollutant levels are reduced from December 1952 levels by a factor of 50, will the fraction of people affected drop by the same factor (in a linear dose response), or will the number of people affected drop to zero? Scientists increasingly believe the fraction does not drop to zero, if it ever does, until air pollution is below present levels. Second, what part of the air pollution causes the effects? Dr. Suresh Moolgavkar, quoted in Fumento's article, is right: We do not know for sure.

In addition to the direct evidence that epidemiologists such as Dr. Douglas Dockery adduce, there is indirect evidence about the way particles behave in the lung, and auxiliary animal evidence, that fine particles are the proximate cause. But we are much more certain that the culprits are some mixture of products of fossil fuel combustion. This argument is the subject of a book I edited with Jack D. Spengler, *Particles in Our Air: Concentrations and Health Effects* (Harvard University Press, 1996).

The EPA does not propose remedies, yet neither does your article or our book. Most scientists would suggest that a reduction in the burning of fossil fuels is important, and may be easier than burning them more cleanly. This need not be expensive, and not even as expensive as EPA calculates. Several economists have independently argued that a carbon tax would encourage greater efficiency in fuel use and more use of less-polluting alternatives. Nuclear power produces no air pollution and does not add to greenhouse gases. In the past 25 years, draconian regulations have increased the cost of electricity from nuclear power by a factor of 2.5 in real (inflation-corrected) terms. I invite Michael Fumento to address the question of why so many people will not accept nonpolluting nuclear power but

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are willing to accept one of the biggest risks of our industrial society.

Although there are many features of the EPA proposal I would do differently, the agency should be commended for (at last) addressing one of the bigger risks society faces, rather than merely nibbling at the small risks to suit some special nonscientific interest.

Richard Wilson
Mallinckrodt Professor of Physics
Harvard University
Cambridge, MA

I waded through the entire 14 pages of Michael Fumento's treatise on why particulate air pollution is not a problem. Perhaps some libertarians are pleased that particulate air pollution might not need government intervention since, according to Fumento, it is nothing to worry about. I am getting tired of this approach. Fumento has made quite a career telling us that social, health, and environmental problems are nothing to worry about, but I expect a bit more from REASON. Perhaps we might benefit from articles on proactive, nongovernmental solutions rather than boring, nitpicking articles that wish problems away?

Gordon LaBedz, M.D.
labedz@aol.com

Michael Fumento replies: Pages 32 through 34 of my article deal specifically with Richard Wilson's statement about a small risk being substantial if spread over a large population. It's true but irrelevant. The point is that the small risk is hypothetical, was deduced from a handful of studies, and pushes epidemiology well beyond its limits. I noted that studies finding a 50 percent increase in breast cancer associated with induced abortion were pooh-poohed as being too small an increase to mean anything, even as the 5 to 10 percent increase in deaths associated with PM2.5 is thought to be powerful enough to be the basis for hundreds of billions of dollars in new regulations.

Further, as I noted, there are only four studies with a direct measurement of PM2.5 that look at premature mortality. Of these, one is highly flawed but on its face shows a statistically significant association between PM2.5 increases and deaths. Two show no such associations. The fourth shows an association in three cities and none in the other three. In other words, there is no epidemiological evidence that there is the tiniest increase in deaths caused by a rise in PM2.5 matter.

As to toxicological evidence, "Available toxicological studies provide few clues in explaining acute mortality at low particle concentrations," according to Dr. Mark Utell, a member of the EPA's scientific advisory board. He and Mark Frampton, like Utell an M.D. at the University of Rochester Medical Center, have concluded: "Controlled clinical studies with acidic particles at concentrations greater than twenty times ambient [levels] fail to produce [lung inflammation] in healthy individuals," and "subjects with [chronic obstructive pulmonary disease], the group at presumably highest risk [to judge from] the epidemiological data, show no reduction of lung function with similar acute exposures."

Similarly, notes University of British Columbia professor of medicine Dr. Sverre Vedal: "There is no known mechanism whereby exposure to very low concentrations of inhaled particles would produce such severe outcomes as death, even from respiratory disease, and certainly not from cardiovascular disease."

Even the EPA's own staff paper admits, "One of the most notable aspects of the available information on PM is the lack of demonstrable mechanisms that would explain how such relatively low concentrations of ambient PM might cause the health effects reported in the epidemiological literature."

As to nuclear power, I'm all for it. But it is, alas, a dead issue in this country.

Finally, as to the EPA's not proposing remedies, I'd like to know how else to classify these utterly indefensible new regulations that studies from the Reason Public Policy Institute and others have shown are far more likely to cost lives (by draining the economy) than to save any.

Regarding Dr. LaBedz's snippet, the purpose of those 14 pages was to show in myriad ways that no evidence exists that there is anything to worry about in this case—except for worthless, onerous, lifestyle-changing, people-killing new regulations. Why should I be obligated to come up with a solution, governmental or nongovernmental, to a problem the EPA has failed to show even exists? As to my "career," I have done a great deal of writing warning about social and health problems, including my new book on the obesity epidemic, *The Fat of the Land.* But the fact is, virtually all major environmental problems are already improving, leaving the EPA and the activist groups feeling they have to grossly exaggerate what's left. In so doing, they distract us from the social and health problems that are all too real.

Gun Rights and Wrongs

T. Markus Funk's review of Don Kates and Gary Kleck's excellent *The Great American Gun Debate* ("Straight Shooters," August/September) is a valuable and well-written summary of the case for the social utility of private gun ownership, and of the ideological, data-be-damned bias against guns by the country's journalistic elite. Those of us who travel outside the country frequently know that this bias is not limited to America. I am an American by birth who was raised in Canada, and my frequent travels to the country of my youth serve as constant reminders of this.

My only complaint with Kates and Kleck's generally fine book, and with Funk's praiseworthy review of it, is that it gives short shrift to the most important justification for the freedom to own a gun. That reason is theoretical and deontological, not consequential. Citizens have a natural right to self-defense. Guns are great equalizers which enable physically weak citizens to more effectively stand up to bullies (including bullying governments). One citizen's natural right to self-defense is simply not dependent on another's misuse of his guns. Our Constitution enshrined the right to keep and bear arms for these reasons of natural right. By abandoning them, gun-rights defenders play into the hands of the public policy elite, which scorns natural right and natural law.

Michael I. Krauss
Professor of Law
George Mason University
Arlington, VA

Citings

Kiddie Cops

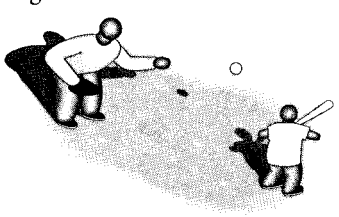
By Brian Doherty

In addition to "ending welfare as we know it," the 1996 welfare act is helping to end privacy as we know it—all in the name of child support.

As a further step in the federal effort to crack down on "deadbeat dads," as of October 1 the feds required *everyone* who gets a new job in the United States to report his name, address, and de facto national ID number (a.k.a. Social Security number) to state child support agencies, to ensure that dads tardy with their child support can't make any cash without the government's knowledge.

Employers have to do the reporting, but they aren't the only ones being deputized by the child support sheriff: Your banker is, too. Under the threat of losing federal child support subsidies, the 1996 law requires every state to set up a data system that matches the state's list of deadbeat dads against bank account holders in the state.

Some states are moving beyond the federal mandate. Vermont requires that the amount of money in a deadbeat dad's account, not just the account's existence, be reported. And Minnesota has set up a second option for banks that don't want to go to the trouble of checking the state's list of deadbeats against their account records:



Banks can send the government information on *all* account holders and let the state do the checking.

Even the government officials who enforce the programs aren't always sure what's going on. The head of Vermont's office of child support was uncertain of the details on his state's bank-account reporting provisions until I asked him to look it up. And some Minnesota state representatives thought their program *had* to be set up to report on all accounts, even though that's not part of the federal law.

Commodifying Speech

By Michael W. Lynch

What's the difference between analysts who comment on the stock market for newspapers or the nightly news, durable goods for *Consumer Reports*, and commodity markets for newsletters and Web sites? Individuals who comment on commodity markets in print must register with the federal government or face felony charges punishable by five-year prison terms and $500,000 fines.

Since 1993 the Commodity Futures Trading Commission has required anyone who publishes information on the commodity markets to register as a "commodity trading adviser." Each adviser must pay an annual fee of $100, submit to fingerprinting, and allow on-demand audits.

In late July the Institute for Justice, a Washington, D.C.–based public interest law firm, filed a lawsuit on behalf of newsletter and online publishers, charging the CFTC with unconstitutionally abridging their speech. "In America, you don't need permission from the government before offering your opinions," says I.J.'s lead attorney, Scott Bullock. "This case will decide whether the government can control the flow of financial investment information."

The plaintiffs have the Constitution and Supreme Court precedent on their side. When the Securities and Exchange Commission attempted to regulate stock market writers in the 1980s, the Supreme Court rebuffed its regulatory overreach, ruling in *Lowe v. Securities and Exchange Commission* (1985) that individuals who merely publish stories on the stock market need not seek government approval.

While the CFTC hadn't replied to the lawsuit at press time, it has maintained that *Lowe* doesn't apply to commodity trading.

Although pursued in the name of protecting investors, the registration rule hurts them by constraining the free flow of information. The pernicious publications the CFTC seeks to keep in check include plaintiff Bo Thunman's *Club 3000*, a forum for a group of traders who critique commodity advisers, and plaintiff Roger Rines's

Balance Sheet

By Rick Henderson

ASSETS

▲ Speech Savers. The filibuster led by Sen. Mitch McConnell (R-Ky.) should kill campaign "reform" for another year. The political class is flummoxed. Grassroots advocacy lives. McConnell's maneuvers also give Americans a much-needed lesson in how the legislative process should work—deliberately. Madison would be proud.

▲ Code Cracked. The European Union issues a surprisingly scathing attack on "key escrow," the White House proposal giving law enforcement agencies access to all scrambled messages sent over computer networks. The E.U. report says key escrow would hinder electronic commerce, would not stop criminals who use data encryption, and might compromise existing European privacy laws. Take *that*, Louis Freeh.

▲ Enforcement Trap. Kevin Harris, acquitted of federal murder charges along with Randy Weaver in the Ruby Ridge shootout, may be free at last. Idaho judge Quentin Harden tosses out state murder charges against Harris, saying they constitute double jeopardy.

▲ Oil Plan. Despite the Yeltsin regime's continuous turmoil, privatization in Russia moves ahead. The government will sell its share of Rosneft, the country's fifth largest oil company. Western investors, including Shell, Exxon, and B.P., may bid more than $1.5 billion when the company hits the auction block.

▼ **Dope Fiend.** House Speaker Newt Gingrich suggests extending the tobacco deal's attack on teen smoking to include alcohol use and illegal drugs. (Whatever that means.) Mr. Speaker, which part of *clueless* do you not understand?

▼ **Taking License.** NBC courageously refuses to add content labels to the age-based ratings it assigns TV shows. Senate Commerce Committee Chairman and presidential hopeful John McCain (R-Ariz.) threatens to ask the FCC to "review" (that is, deny) NBC affiliates' licenses at renewal time. McCain may also back a bill that would prohibit programs that contain violence from airing before 10 p.m.

▼ **Apple Bites.** Transit unions maintain their death grip on New York politics. Under union pressure, the City Council votes 38 to 8 to stop issuing or renewing licenses to van operators who compete with the Big Apple's bus or subway monopolies. *The Wall Street Journal* estimates the ban will strand some 30,000 commuters, most of whom live in the city's worst neighborhoods.

▼ **Leaf Blowers.** The welfare state lives in Dixie. Southern Democratic senators propose a $17 billion pool of tax money "to offset farmers adversely affected by a [tobacco] settlement," notes the newsletter *Inside Congress*. Another proposal would guarantee welfare payments, er, sales for U.S. leaf growers if anti-tobacco initiatives cause the domestic market to collapse.

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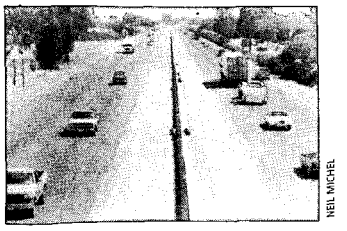
Colorblind Affirmative Action

By Brian Doherty

A colorblind society and affirmative action are usually presented as mutually exclusive. Now affirmative action bureaucrats in Colorado have found a way to split the difference.

It's all because of Randy Pech, owner of Adarand Construction in Colorado Springs. Pech made affirmative action history when his lawsuit challenging a minority set-aside program in federal highway contracting, *Adarand v. Peña*, made it to the Supreme Court. In its 1995 decision, the Court declared that federal affirmative action programs had to be more narrowly tailored than previously and sent the case back to district court in Colorado. In June, Pech won the case, and the highway contracting program was overturned (though it has not yet stopped operating completely, and the federal government may yet appeal).

Pech didn't stop there. He



NEIL MICHEL

filed a further lawsuit, *Adarand v. Romer*, challenging Colorado's racial preference programs. To beat Pech's challenge, the state quickly changed the way it decided which business owners were disadvantaged, so that the status no longer depended necessarily on the owner's race or sex.

U.S. District Court Judge John Kane decided, since color was no longer key, that Pech's history of being discriminated against by the old set-aside programs made *him* disadvantaged—and that if he was covered by the program, he had no standing to sue to overturn it.

"What Colorado has done," says Pech's lawyer, William Perry Pendley of the Mountain States Legal Foundation, "is drawn a disadvantaged business enterprise circle and put everyone inside it: minorities because of race, and white guys for all the years they've been discriminated against by federal rules."

Pendley points out that the feds haven't looked kindly on states that alter affirmative action programs on their own. Oregon tried to eliminate some highway construction set-aside programs after the Supreme Court's *Adarand* decision, but a federal threat to cut off highway funds changed the state's mind.

"What door has this opened for other states?" Pendley wonders. "Now Pete Wilson or someone could say, 'Why draw a circle with everyone in it when it costs ▶

QUOTES

"The new cards should help restore confidence in the Social Security system."
—Sen. Daniel Patrick Moynihan (D-N.Y.), on proposals to force every American to pay as much as $38 to obtain a new, "tamper-resistant" Social Security card.

Mary Tillotson interviewing Ann Moore, president of *People* magazine, on *CNN & Company* two days after the death of Princess Diana:

Tillotson: How will [Princess Diana] long-term be remembered, do you think?

Moore: I think long-term, she'll be remembered as one of the bigger risk takers of our time....And part of her appeal was not that she showed us being a fairy princess wasn't all that it [was] cracked up to be, but we admired the fact that she was way out there on the edge.

Tillotson: And a survivor.

Moore: She was a survivor, and we love that.

"Farm Aid founder Willie Nelson explained that technically the concert hadn't been canceled, it's just that the musicians are participating in a new government incentive program that pays them 'not to play.'"
—Craig Kilborn on Comedy Central's *The Daily Show*, September 23

BRICKBATS

♦Raymond Holcomb has muscular dystrophy and can barely speak. So when he won a concert by John Mellencamp in his own backyard from music channel VH-1, it must have really made his day. And when he got a bill from the IRS, it must have really confused him. The IRS considers the prize taxable income worth $11,700. The concert left Holcomb $2,496 in the hole to Uncle Sam.

♦Four years ago, Hurricane Andrew hammered Dade County, Florida. Now the state trust fund established to get the area back on its feet is pretty much tapped out. No wonder. An investigation by *The Miami Herald* found that at least one-sixth of that money went to projects outside the region. For instance, distant Ft. Lauderdale got $106,000 in relief to make up for lost parking ticket revenue.

♦Dade County resident John Crouse can't blame the hurricane for his problems. His dog died back in 1995. In 1996, the county sent Crouse a notice to have the collie's license renewed. He told the control officer that his dog was dead, and therefore he didn't think he needed to register it. When he didn't renew the license, the county fined him. So Crouse again reported that the dog was dead, and had his veterinarian send in a copy of the death certificate. County officials responded by notifying Crouse that if he didn't pay the fine, which was now $500, within 30 days, they'd slap a lien on his house. They also notified his mortgage holder of their intent.

millions to just *run* these programs? Why not just take the lowest bid on projects and kill the silly program?' "

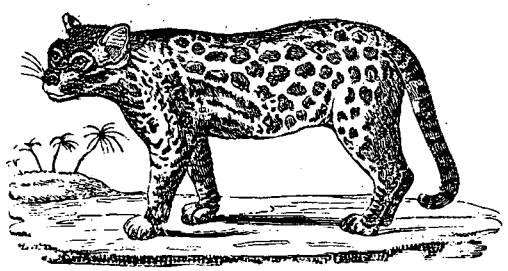
Pech is planning to apply as a disadvantaged business owner but had not done so at press time.

Cat Fight

By Nick Gillespie

In late summer, the U.S. Border Patrol initiated "Operation Rio Grande," a measure aimed at decreasing illegal immigration in and around Brownsville, Texas. At the start of the program, about 60 protesters objected, claiming that the effort—including the hiring of 55 extra border cops and the stringing of high-intensity lights along the border—would surely lead to civil rights abuses of legal immigrants and workers. Those fears have yet to materialize, and most observers grant that the program has succeeded in slowing illegal entries in the Brownsville area.

But Operation Rio Grande is not in the clear yet. It faces a new protest—from the U.S. Fish and Wildlife Service, the agency charged with making sure that federal projects comply with federal environmental laws. Wildlife officials claim that the same lights that keep illegal immigrants at bay are also disrupting the migration patterns of ocelots and jaguarundis, two indigenous species of cats covered by the Endangered Species Act. Currently, only one half-mile of the border is illuminated, but Operation Rio Grande calls for lighting up a 31-mile stretch. Because the wild cats are nocturnal, a Fish and Wildlife spokesman told the press, "their activities may be disrupted by the floodlights."



Untroubled by the impact of the lights on human migration patterns—and over the objection of the Texas senatorial delegation, which apparently objects to border-crossing felines and humans with equal fervor—the Border Patrol has nonetheless pledged to hire a consultant to develop a lighting plan that would not disturb the cats' late-night wanderings.

Annoying Rule

By Jacob Sullum

The Communications Decency Act lives. Last June, in *Reno v. ACLU*, the Supreme Court overturned the law's ban on "indecent" electronic communication that might be viewed by minors. But that case did not address a provision making it a felony to transmit "indecent" material "with intent to annoy...another person."

Annoy.com seems designed to test that prohibition—because it was. ApolloMe-

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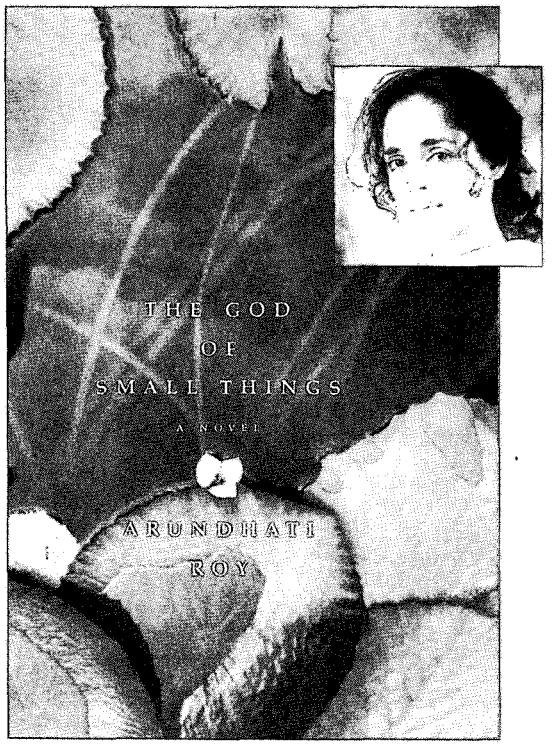


Old Jewel, New Crown

Pictured here is the jacket of *The God of Small Things*, by Arundhati Roy (inset), the prime literary exhibit of what has been called "Indo Chic." Interest in India extends from high culture (music, film, art, and fiction) to low (body painting).

This is the West's third round of such fascination. Kipling's India was a piece of colonial exotica; the India of The Beatles, out of Herman Hesse, was a mystic cartoon. This round also displays exoticism, but whether Western interest is welcomed or derided depends on one's view of cultural synthesis.

"India is now the jewel in a new U.S.-centered crown whose key elements are capital, leisure, and high technology," sniffed University of Chicago anthropologist Arjun Appadurai in *The New York Times.* Appadurai may not like it, but he has the pieces right. Since it moved toward a market economy and developed an exploding middle class, India's voice—especially, as with Roy's novel, when it speaks English—is increasingly becoming part of international culture. Much the same thing happened in postwar Japan.

Meanwhile, in India, the middle class is trying Kellogg's Basmati Flakes. A "transnational capitalist class," sneers the academic left—but we'll see if they enjoy their breakfast.

—Charles Paul Freund

dia, the San Francisco Web site producer that maintains this "meeting place for the uninhibited," was already working on its own political commentary site when Congress passed the CDA in February 1996. But "the law certainly had an impact on the tone and direction it took," says ApolloMedia President Clinton D. Fein.

In annoy.com's "heckle" section, you can read a rant about, say, censorship or marriage, then fill out an anonymous, Mad Libs-style e-mail message to someone mentioned in the piece. ("Dear Phyllis Schlafly...") Click over to "censure," and you can send rude electronic postcards to politicians such as Newt Gingrich, Dianne Feinstein, Jesse Helms, and Janet Reno. The site also features ad parodies, press criticism, a weekly column mocking the comments of public figures, and a message board where visitors can slug it out with each other.

"We deliberately explore the limits of what is acceptable," says Fein. That's a nice way of putting it. Annoy.com revels in vulgarity, including scatological references, pictures of genitals, and George Carlin's "seven dirty words." Which would seem to put it somewhere in the vicinity of that mysterious territory known as indecency. No one really knows where that is, of course—which is one reason the Supreme Court decided the CDA's child protection provision ran afoul of the First Amendment. ApolloMedia argues that, in light of that decision, the CDA's ban on annoying indecency, which applies to communication between adults, is unconstitutional on its face.

The company's lawsuit, filed in January, was put on hold pending the outcome in *Reno v. ACLU.* Now it is proceeding. A hearing before a special three-judge panel in San Francisco was scheduled for October. Details about the case are available at (where else?) www.annoy.com.

Footloose in Hermosa Beach

By Brian Doherty

Kevin Bacon is thankfully nowhere in sight, but a *Footloose* situation is brewing in Hermosa Beach, California, a small town south of Los Angeles.

The state Department of Alcoholic Beverage Control has been cracking down lately on local liquor establishments there, issuing citations of up to $3,000 for dancing in establishments not explicitly licensed to allow it. (One Indian restaurant was cited for having a belly dancer on the premises.) One citation noted with horror that a busboy walked right through a crowd of wanton dancers without trying to stop them.

Hermosa Beach City Councilmember Robert Benz sees this as heavy-handed state interference in local affairs. The City Council complained to the governor, who promised an investigation. "What the ABC is doing in Hermosa Beach has nothing to do with alcohol. It's more like land use planning," Benz insists. He objects to state attempts to enforce different closing hours for different kinds of bars, which Benz says creates problems with groups of drinkers moving from place to place.

"ABC officials tell me, 'Everybody knows nightclubs have more problems.' They view dancing as a catalyst for worse problems. Shake that booty, and pretty ▶

BRICKBATS

◆In China, fellow prisoners severely beat dissident Wei Jingsheng, who is serving time for advocating democratic reforms. The prisoners were reportedly promised reduced sentences if they attacked Wei.

◆Daniel Bowden is a military police officer who has undergone training on handling bank robberies. It seems the military's training may be inadequate. Bowden entered a credit union in Virginia and tried to wire $2,900 in cash to Texas. The teller recognized him as the man who had robbed her just a few days earlier. It was an easy identification, since the bank robber hadn't worn a mask. The serial numbers on the cash he had brought matched those on money taken in the robbery, and Bowden was arrested.

◆In Alabama, a federal judge ruled that a marketing firm working for the re-election of Gov. Jim Folsom violated federal law by having black employees call only black voters and white employees call only whites. U.S. District Judge William Acker said federal anti-discrimination law bans such tactics. He also said the law might well prevent advertisers "from employing, based on race, actors to solicit products to a certain group" and the "exclusive hiring of black actors to play such roles as Othello."

◆Boris Yeltsin is considering banning the use of foreign words in advertising to promote the purity of the Russian language.

—Charles Oliver

Chip Bok

soon you're raping grandmothers." But Hermosa Beach has seen no increased crime because of restaurants that serve booze, insists Benz, who thinks how the city regulates local establishments is its business.

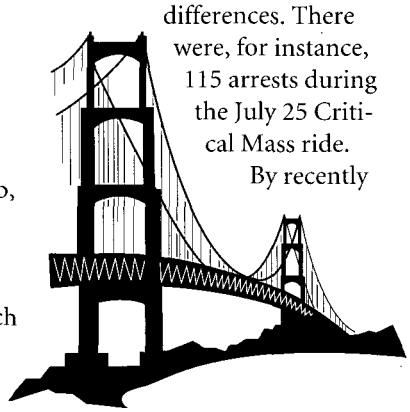
In retaliation for the ABC's perceived meddling, Hermosa Beach officials are threatening to arrest any ABC officer who hassles someone for dancing, something the city sees as its citizens' right.

Carl DeWing of the ABC defends his agency's position. In many cases, he says, officers are responding to neighborhood complaints about noise and disturbance. All alcohol-serving establishments have legally specified roles, DeWing adds, and "if they start going beyond that they are violating the conditions of their license. If you let it slide, a restaurant designed for family-type fare could wind up as a nightclub, with live entertainment, noise, public urination, and drunkenness. Nightclubs have security problems which restaurants don't have. You change the impact on the community." DeWing adds that if Hermosa officials interfere with an ABC officer doing his duty, they are the ones guilty of a crime.

Green Daze

By Brian J. Taylor

The last Friday of every month, thousands of bicyclists converge in downtown San Francisco to, well, make driving difficult. That's their goal. The tension underlying the monthly pro-environmentalist/anti-car "Critical Mass" demonstrations occasionally breaks through to the surface, as aggressive riders and touchy drivers resort to curbside altercations to resolve their differences. There were, for instance, 115 arrests during the July 25 Critical Mass ride. By recently endorsing the controversial Sustainability Plan for the City of San Francisco—an eco-friendly, long-term municipal planning strategy—the city's Board of Supervisors is broadcasting another loud, if less volatile, environmentalist statement. Nearly 400 people spent three years pooling notes and attending meetings to produce the plan—an audacious document weighing in at 177 pages.



The Board of Supervisors approved the plan with only one member voting no: President Barbara Kaufman voiced her opposition by citing what she called such "wacky" ideas as banning cars on parts of Market Street. The plan contains plenty of other recommendations that cry out for further scrutiny—including limits on the use of perfume and scented deodorants, subsidies for beekeeping in parks and fish harvesting in the Bay, a requirement that sellers of homes plant trees on their streets, and elimination of landscaping when it interferes with nesting birds. (One part of the plan that

was axed was a proposal to poison all the city's stray cats because they eat birds; cat lovers eventually prevailed.)

The press has not been kind. A *San Francisco Chronicle* editorial called the plan "A Tree-Hugger Manifesto," and said, "Instead of sticking with achievable goals dealing with energy use, housing design or open space, the report vacuums up every nutball nostrum out there in the woods." Capitol News Service columnist David Kline said the plan proves that San Francisco "is nuttier than a Snickers Bar."

Beryl Magilavy, the director of the city's newly created Department of the Environment and the editor of the plan, says the critics are misguided, that the plan deals with serious environmental concerns.

Magilavy and others are working behind the scenes to get some of the plan's specific proposals codified in legislation. "With a sympathetic board [of supervisors] and mayor [Willie Brown has endorsed the basic idea of sustainability]," says Magilavy, "what more do you need?"

The entire plan is available on the city's Web site (www.ci.sf.ca.us/environment/).

DATA

Clash and Carry

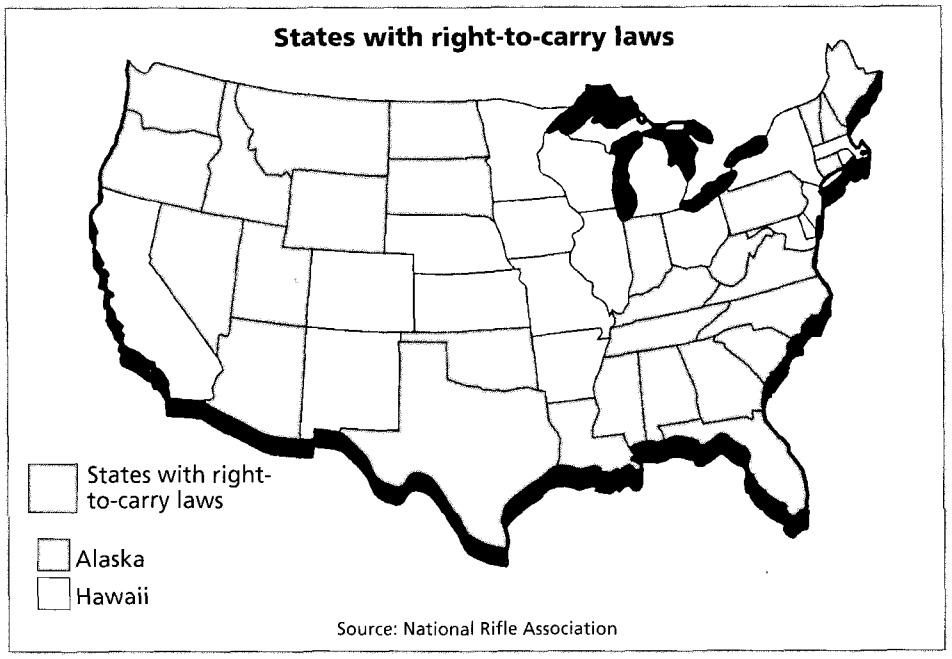
By Michael W. Lynch

While congressional and court battles over the Brady Bill have kept the public's attention on gun laws at the national level, the National Rifle Association has been pursuing a base-hit approach to gun-owner rights, aggressively lobbying state legislatures to permit people to pack pistols. The decentralized strategy is paying off.

Since 1994, 14 states have adopted right-to-carry laws, which allow citizens to carry guns in public, often after passing licensing requirements. Currently, law-abiding residents of 31 states, home to 127 million Americans, can legally carry firearms for self-protection after securing a permit. (Vermont residents don't even need a permit, as the state doesn't regulate gun ownership.)

In 1987 Florida became one of the first states to liberalize its law. Anti-gun activists hyperbolically dubbed Florida the "Gunshine State" and predicted blood-stained streets. A decade later, Florida's handgun homicide rate has dropped by 41 percent, compared to a 24 percent increase nationally, according to FBI data.

Rep. Cliff Stearns (R-Fla.) has introduced national legislation that would allow those with concealed-carry permits to pack heat in the other 49 states. In the 30 states with laws permitting the carrying of concealed guns, the local laws would govern. In the 20 states without such laws (including Vermont), a federal code would rule.



Source: National Rifle Association

Retaking the Fifth

By Michael W. Lynch

Property rights activists have long complained that before an individual can seek redress in federal court for alleged government takings of property, the case must be "ripe." This means the person suing the government must first exhaust all "administrative remedies," which often entails getting around a series of inventive obstructions placed by recalcitrant bureaucrats.

But Congress may soon make life easier for property owners. Rep. Elton Gallegly (R-Calif.) has introduced the Private Property Rights Implementation Act (H.R. 1535), which has 233 cosponsors. And Sens. Paul Coverdell (R-Ga.) and Mary Landrieu (D-La.) have introduced the Property Owners Access to Justice Act of 1997 (S. 1204), which is co-sponsored by Senate Judiciary Committee Chairman Orrin Hatch (R-Utah) and Sen. Byron Dorgan (D-N.D.).

These bills would change the Federal Rules of Civil Procedure. An individual would be able to bring a claim under the Fifth Amendment in federal court after an agency denied an application for the legitimate use of his property and rejected his first appeal.

Gallegly's bill passed the House Judiciary Committee's Subcommittee on Courts and Intellectual Property by a 7-to-4 vote on September 30. The full committee was expected to vote on the bill in October. Hearings for the Coverdell-Landrieu bill are expected sometime this fall.

Same as the Old Boss?

California's term limits are under a legal cloud in the federal courts. But what, if anything, has Prop. 140 changed in Sacramento?

I have never been able to make up my mind about term limits. They are great fun to vote for, and I always have. Anything that causes such paroxysms of outrage within the political class must be worth doing. This may be sufficient reason to support them. An early cartoon on the issue neatly captures my feeling: Two drinkers at a bar. One says to the other, "Do you think politicians should have term limits?" The other says, "Nope. They should get life without parole."

In a more reflective mood, however, I usually have a more complex attitude toward government. True believers will call me a soft-headed sellout, but the theory of the spontaneous order was never meant as a complete substitute for government. The authors of the Declaration of Independence had it right when they wrote that protecting our inalienable rights requires that government be "instituted" among men, based on the "consent of the governed." Government today traduces the principle of consent through an administrative edifice that is practically beyond the reach of electoral majorities and runs roughshod over our rights through various subterfuges. Term limits are a potent populist expression of the perception that we are not being governed by our consent. But is tenure in office the root of the problem? Although term limits promise to wreak havoc on the political class, will the restoration of frequent rotation in office (which Alexander Hamilton assailed as a "feeble principle") lead to a fundamental change in the character of our government? Will the growth of government slow or reverse? Or will term limits end up as a fun but distracting sideshow?

The question is especially vital at the moment. On October 7, a three-judge panel of the U.S. Court of Appeals for the 9th Circuit declared California's term limits initiative unconstitutional. Writing for the majority, Judge Stephen Reinhardt didn't invoke the typical concern raised by the opponents of term limits—that voters have a First Amendment right to select whatever candidates for public office they desire. Rather, Reinhardt made the unprecedented declaration that the 3.7 million Californians who cast their ballots for Proposition 140 in 1990 didn't *know* they were voting to place a lifetime ban on officeholders who complete their maximum terms. (The Supreme Court reversed Reinhardt's opinions a record 11 times last session, so the justices are expected to review this decision as well.)

HENRY PAYNE

By Steven Hayward

LICENSED
ELECTRONIC REPRODUCTION PROHIBITED

I used to say that I awoke in the morning opposed to term limits in the abstract but immediately changed my mind upon seeing the first politician in action. For a long time, this didn't require tuning in C-SPAN; it involved simply walking down the street. From 1988 to 1994, when I worked for the Claremont Institute and the Pacific Research Institute, I lived just a few blocks from the state capitol and got a close look at the legislature as it chopped up and spat out nearly 5,000 pieces of legislation a year. It was seldom an edifying spectacle.

As the largest state, California has the legislature that most resembles Congress, so it's a good place to consider the likely impact of term limits at the federal level. The California legislature is a full-time, highly paid body with a large staff and adjunct agencies similar to the Congressional Budget Office and Congressional Research Service. In addition, California enacted the three-term (six-year) limit for the Assembly that term limit advocates demand for the U.S. House, rather than a 12-year maximum. The limit for the state Senate is two terms (eight years).

The argument about inexperience has always struck many term limits supporters as a bad joke. As Prop. 140 sponsor Lew Uhler puts it, "If you're having your safe cracked, would you rather have it done by a first-time amateur, or by a seasoned pro who has done it hundreds of times?"

California has always offered a menagerie of walking arguments for term limits. My favorite is state Sen. Ralph Dills (D-Gardena), California's answer to Strom Thurmond. The 87-year-old Dills was first elected to the legislature in 1938. He still shares tales from time to time about dealing with Harry Hopkins and other New Dealers. Up against his Senate term limit next year (his slogan for his last election campaign was "Too Old to Retire"), he is planning to run for the state Assembly, where he still has six full years of eligibility, even though he had to be rolled onto the Senate floor in a wheelchair for some key votes this year.

Republicans offer their own examples of deadwood, such as the appropriately named Sen. William Craven. First elected in 1972, he is not as old as Dills (his legislative biography does not divulge his age), but he missed much of the recent legislative session because of illness. It is not clear his colleagues missed him; he hasn't attended Senate Republican caucus meetings for years, and his principal Senate task seems to be the apportioning of parking spaces for staff people. Craven's chief of staff, paid a six-figure salary, oversees this function.

Then, of course, there was the legendary Assembly Speaker Willie Brown. The legislature under Brown was a barely concealed swap meet. He used to essentially extort fabulous sums of money from business interests in the form of campaign contributions, under the implied threat that bills they wanted enacted (or blocked, in the case of the tobacco industry) wouldn't see the light of day if they didn't pay up. It was an efficient, smooth-running machine. Brown's genius was his ability to protect and expand liberal interests while buying off business interests with narrow favors. This not only stymied any broad-based reform such as tax reduction or deregulation, but also kept business interests from coalescing into a serious force against Democrats in elections. It drove Republicans crazy.

Under Brown, the lobbying community became known as the "third house," since lobbyists were a de facto branch of the legislature. The biggest statist interests—the trial lawyers, the teachers union, and other labor groups—enjoyed a stranglehold on the legislature. Membership on "juice" committees—banking, insurance, natural resources—was highly coveted because these committees allowed you to generate more campaign cash. One veteran lobbyist was legendary (before he went to prison) for the way he would stand in the back of committee rooms, wig-wagging hand signals like a third base coach to indicate to the committee chairman which bills should be killed or voted out, which amendments accepted, and so forth. Brown's whole apparatus worked so smoothly, in fact, that widespread rumor has it that when the FBI investigated political corruption in Sacramento in the mid-1980s, Willie was their main target. The Feds never laid a glove on him. Two Republican legislators went to federal prison instead.

When I moved to Sacramento, Brown was in his eighth year as speaker of the Assembly and nearing the record for the longest-tenured speaker in California history. Brown referred to himself as "the Ayatollah" of the legislature, and the description was not hyperbole. But Republicans were sure they were closing in and would get the drop on him in the next election, or the election after that. California Republicans were the Chicago Cubs of modern politics: Just wait till next year. Brown was still speaker when I left town in 1994. And even though Republicans did finally break through in the election of 1994, taking a slim majority of the Assembly for the first time in 25 years, Brown's legerdemain was such that he still kept the Assembly under Democratic control for another year.

Throughout the 1980s, Republicans salivated over polls show-

ing that Willie Brown was highly unpopular around the state—sort of like House Speaker Newt Gingrich today. Just as Democrats last year tried to tie Republican House members to Newt, California Republicans always tried to tie Democratic legislators to Willie. It seldom worked. The advantages of local incumbency always won out over Willie's general unpopularity. The Republicans scarcely dented Brown's majority. Only three incumbents were defeated in the last three elections of the 1980s; the overall turnover rate for the Assembly fell by half during the decade.

But what if the *entire state* could vote against Willie through the proxy of term limits? Term limits offer a powerful means to cut through the modern electoral paradox wherein voters hate the political class in general but love their local representative. Term limits allowed you to vote against the *other* guy—*all* the other guys, in fact. Never mind that it was the political equivalent of Mutual Assured Destruction, wiping out your own local guy as well as the other town's bum. Term limit proponents in California offered all the usual reasons in favor of the idea, but its biggest attraction was left unstated: It would be the long-sought silver bullet for Willie Brown. Although term limits didn't start in California, it's hard to deny that California helped propel a national movement simply to get rid of one person.

Seven years after the enactment of term limits with the passage of Proposition 140, following a rough transition period that saw old-timers clinging to the last threads of power along with newcomers ready to change things, what judgments can be made about the effect of term limits in California? I returned to Sacramento several times during the spring and summer, visiting my old haunts in the Assembly gallery and committee rooms. The scene looked much the same, even if most of the faces were new. Committees still abused witnesses. The state budget was still woefully late. Gridlock still prevailed. Who were all these no-names? Where were my favorite old dinosaurs? Yet beneath these superficial features, there were some signs of significant change.

Although the conventional wisdom is that "the jury is still out" on how term limits are working, it is possible to give a midterm report card. The best way to begin an evaluation is to assess the conditions in Sacramento based on a balance sheet of the arguments in favor of and against term limits. The main arguments in favor of term limits are:

- Term limits will produce more competitive elections.
- Term limits will produce a "citizen legislature" of more ordinary people rather than professional politicians. Term-limited representatives would be more in harmony with public opinion and with their districts' constituents.
- Term limits will reduce the influence of special interests by disrupting the buddy-buddy relationships and favors that lobbyists use to capture entrenched incumbents.
- Term limits might even reduce the growth rate of government, at least on the congressional level, where studies have shown that the longer legislators are in office, the more spending and bureaucracy they tend to support.

The main arguments against term limits reduce to these two:

- Term limits will produce an inexperienced, amateur legislature. Term-limited officeholders will have little motivation for the long term and will be looking to advance themselves quickly into higher office.
- Inexperienced legislators will be easy prey for special interests; bureaucrats and permanent staff will dominate them.

Not all of these claims can be objectively assessed, of course, but the weight of the available evidence, and the common-sense perception of the matter, appears to fall on the side of term limit advocates.

First of all, it was not necessary to wait until 1997 to discern the impact of term limits. Some of the intended effects were felt immediately after passage of Prop. 140 in 1990. One of the highest-ranking Assembly Democrats, Mike Roos, scarcely concealing the personal insult he felt, resigned for a job in the private sector (albeit at a nonprofit educrat boondoggle), while two senior senators (one Republican, one Democrat) resigned to become highly paid association heads (a.k.a. lobbyists). Most notably, Willie Brown left halfway through his last term to become mayor of San Francisco and in doing so surrendered full control of the Assembly to the Republicans.

I have long thought this direct insult to politicians' egregious egos was the best aspect of term limits. As Henry Adams observed, "The effect of power and publicity on all men is the aggravation of self...one can scarcely use expressions too strong to describe the violence of egotism it stimulates." Term limits send the tacit message that none of these officeholders is indispensable to the future security and progress of our republic. The lifetime ban of California's term limits underscores this insult, which has prompted countless silly comments from aggrieved legislators. Sen. Bill Craven said, apparently without any trace of irony, "This places legislators in the same category as felons." (Whether the anti–term limit lawsuit is decided by the full 9th Circuit or the Supreme Court, the lifetime ban will likely be the main issue.)

As the first elections after Prop. 140 approached, numerous other legislators either retired early or ran for higher office, thus clearing out a larger number of seats than usual. The trend was encouraged not just by term limits but also by a fair reapportionment in 1991, which produced more swing districts. During the 1980s, the overall turnover rate in the Assembly was 16 percent (the second lowest of all 50 states—only New York was worse), and 85 percent of incumbents sought re-election in each cycle. Incumbents were a virtual lock for re-election. In the two elections leading up to 1996, the Assembly turnover rate increased to 36 percent, and the share of incumbents seeking re-election dropped to 67 percent. More women and minorities were elected. There was a similar shakeout in the state Senate. Elections have become more competitive. The number of candidates filing to run has increased significantly, and the margins of victory in both primary and general elections have narrowed.

This post–term limit ferment contributed to the Republican takeover of the Assembly in 1994, the first time in a quarter century the Democrats lost control of that house. The election

of 1994 featured 22 open Assembly seats (out of a total of 80), far higher than in any election during the 1980s. Though the 1991 reapportionment and the national Republican tidal wave in 1994 likely were more important than term limits, the narrow takeover probably wouldn't have happened without the additional open seats that term limits produced.

Even though California's legislature is the highest paid in the nation (members get over $100,000 a year in salary, per diem, and other perks), thus making it a virtual incubator for career politicians, the term limit environment does seem to be producing more people who fit the description of "citizen-legislator," with many more members having business experience, especially small-business experience, than was typical in the 1980s. Nearly a quarter of the legislators (23.7 percent) now claim to have had experience as business owners, up from 8 percent in 1976 and 10 percent in 1986. The number of former city council members, school board members, and other local elected officials has quadrupled. Most notable has been the marked decrease in the number of former staff people moving up to Assembly and Senate seats. The ranks used to be peppered with former staff people, the apotheosis of cronyism. There are none among the newest crop of legislators. (There are still plenty of lawyers, alas.) The influx has certainly given the capitol a new look and feel. It is commonplace for freshman Assembly members to be committee chairs.

While Republicans in the legislature continue to be a mix of rock-ribbed conservatives and chamber-of-commerce moderates, term limits seem to have produced a higher number of moderate Democrats, less beholden to the party's liberal leadership and interest groups. Most of these new moderates come from California's Central Valley, where agricultural interests reign supreme. Valley farm interests are considered "pro-business" but of course depend on water socialism and subsidies, and they tend to support Democrats as often as Republicans. As one veteran Republican legislator told me, "the new Democrats are more tolerant of private enterprise than their '60s radical predecessors, who dominated the legislature under Brown."

It was the reservations of moderate Democrats about the party's position on welfare reform that divided Democrats in this year's budget battle. The Democratic leadership wanted to hold out for a very liberal "reform" plan (i.e., no reform at all), but several moderate Democrats balked. This division strengthened Gov. Pete Wilson's hand, which enabled him to drive a compromise welfare reform plan that many conservatives think was a sellout but which is probably more than he would have gotten had Willie Brown still been in charge.

The current legislature is certainly "inexperienced" compared to its predecessors. The Sacramento press corps, which doesn't like term limits any better than veteran lobbyists do, has produced one story after another about "rookie mistakes" by new legislators. The new members are "inept at the basics of politics," a *San Francisco Chronicle* reporter wrote. Ross Sargent, the longtime chief of staff to Sen. Pat Johnston (D-Stockton), complains of rookie legislators that "you talk to them and say, 'That [idea] was here five or 10 years ago,' and they express surprise." Bill Lockyer (D-Hayward), president pro tem of the Senate, circulated a memo to the Assembly offering tips on how to "work" legislation, a move political junkies pounced upon as an unheard-of step made necessary by term limits. The new Assembly speaker, Cruz Bustamante (D-Fresno), is in his final term and is widely perceived to be extremely weak because of term limits.

The argument about inexperience has always struck many term limits supporters as a bad joke. As Lew Uhler, one of the sponsors of Prop. 140, puts it, "If you're having your safe cracked, would you rather have it done by a first-time amateur, or by a seasoned pro who has done it hundreds of times?" Mark Petracca, a political scientist at the University of California, Irvine, who has studied term limits closely, observes that the new legislators can hardly be considered totally inexperienced, because many of them have backgrounds on school boards, city councils, county boards of supervisors, and other local government bodies. But there are still a number of new members without much government experience at all. Is this in fact a bad thing, or perhaps a virtue of term limits?

Consider, for example, the case of Democrat Carl Washington, an African-American Baptist minister from Los Angeles. He replaced Assemblyman Willard Murray, who was a typical urban liberal and a product of the Democratic machine. Washington wears his innocence on his sleeve. A Republican staff person fell into conversation with Washington one day about the idea of school choice. Washington, intrigued, said, "Sounds like a good idea to me." When told that the California Teachers Association bitterly opposes school choice, Washington replied that it might be a problem for him as well, since the CTA had given him large campaign contributions. But he didn't rule it out.

Washington also made headlines when he voted in committee for a Republican tax cut bill against the wishes of the Democratic leadership. He allegedly said in the committee hearing that he didn't actually agree with the bill but that he voted for it because the bill's sponsor had voted for one of his (Washington's) bills. Open vote trading of this kind is a felony under California law—which is why "experienced" lawmakers have made logrolling an art form—so the attorney general opened an investigation of Washington. It turns out the official tape recording of the committee hearing is mysteriously blank at the moment of the comment in question. The attorney general recently concluded that there was insufficient evidence to warrant prosecution.

There are two ways of thinking about Washington's example. Opponents of term limits have made him their poster child for the pitfalls of inexperience, of which there are many other examples from this term. Others cite the refreshing openness to new (or old) ideas that Washington and other members like him display, along with an inclination to flout the old conventions that made the legislative process an insiders' domain. As one longtime lobbyist told me, "We're getting a refreshing honesty in the new people. They don't know what they're supposed to lie about yet."

The difference between the reliably liberal Murray and his "inexperienced" successor Washington would seem to tip the balance of the argument in favor of term limits for two reasons. In addition to the openness to new ideas, the established big government interests such as the teachers union and trial lawyers have to worry about re-establishing their influence with each new crop of legislators. The teachers union may well be able to keep Washington in line on school choice, but it is not automatic, as it was in the past. And in just a few years they will have to worry about Washington's successor.

"The influence of lobbyists was based on decades of ongoing personal relationships with legislators," says Assemblyman Tom McClintock (R-Thousand Oaks), the most libertarian-minded member of the legislature. (McClintock supported term limits in 1990 but is now having some second thoughts.) "Now the previously well-entrenched interests have to justify themselves to new people, who are strangers. And the new legislators are wary and will often say, 'Oh, you're a special interest lobbyist. I'm not sure I should talk to you.' "

So all lobbyists are finding they have to work a lot harder to establish trust and get their point of view across. A distinction seems to be emerging within Sacramento's "third house." Lobbyists for interests who depend on government favor rather than the market for economic gain, such as trial lawyers and the teachers union, generally hate term limits for the uncertainty turnover has introduced to their previously stable world. Meanwhile, lobbyists for various long-suffering conservative groups whose main mission is opposing government intervention, such as "pro-family" religious organizations and some business interests, are reveling at the new opportunity term limits have given them. "We love term limits," says Michael Bowman of the Capitol Resource Institute, a pro-family lobby. "Term limits have been very beneficial in opening up the process for citizens and for groups who had been shut out before." Many business lobbyists who had little access and even less success with the old Democrats in the legislature say that with term limits they not only have better access but are even listened to. "We have a shot with them now," one business lobbyist says.

With the apple cart upset for both legislators and lobbyists, the scene would seem to be set for staff and the bureaucracy to dominate. My own casual observations led me to think that staff was gaining power, simply because of all the familiar faces I first got to know 10 years ago who are still in senior positions in the Assembly, even though all the officeholders have turned over. Some had even come back to staff jobs after leaving for the private sector (as lobbyists) during the first staff shakeout that followed the passage of term limits in 1990. "Like moths to a flame," I would call out when I saw them back at their old desks.

But the statistics show that enormous staff turnover has accompanied the electoral turnover. As of June, according to the Assembly Rules Committee, 73 percent of current Assembly staff had been on the job for three years or less, and 45 percent had been employed for one year or less. In 1990, before term limits, only 23 percent had worked there less than a year. In 1990, there were more than 200 Assembly employees who had over 10 years' experience. Now there are only about 100 with 10 years' experience.

By all accounts, the new staff members seem as ill-equipped to deal with the legislative process as new legislators. Jim Knox, executive director of Common Cause's California chapter, complains, "I've encountered staff members who are not familiar with the basic timetables of moving legislation, what committees bills go to, what the deadlines are, and how to amend bills." Criticism of poor staff is not limited to good-government types with an allegiance to an activist state. Assemblyman McClintock, who served for 10 years in the Assembly before taking a hiatus and returning this year (he still has four years of eligibility left under his term limit), agrees with Knox: "I think the overall quality of staff work has deteriorated dramatically since I left here in 1992. The staff is turning over as fast as the legislators."

Lobbyists for interests who depend on government favor rather than the market for economic gain, such as trial lawyers and the teachers union, generally hate term limits for the uncertainty turnover has introduced to their previously stable world.

Bureaucratic staff, of course, has been unaffected in any way by term limits, and the attitude of the bureaucracy toward legislators, which resembled the attitude of a rebellious adolescent toward his parents even in the old days, has hardened. Bureaucrats know that legislators, and especially committee chairs, won't be around very long. "The attitude of the bureaucracy toward the legislature is condescending and uncooperative," says McClintock. "They are unresponsive to requests from the legislature and are almost disdainful of legislators."

If all of these impressions can be taken at face value, the score would seem to be 3–1 in favor of term limits: Term limit advocates win on competitive elections, more citizen-legislators, and

a reduction in the power of special interests and staff. Term limit opponents may be right that the bureaucracy comes out stronger vis-à-vis short-term legislators.

But the bottom-line test for term limits will be whether term-limited legislators slow the growth of government and ultimately contribute to a reversal in its size. The early signs are not encouraging. Even this supposedly amateur legislature has managed to produce a law encouraging the state to sue the tobacco industry and intrusive legislation requiring business owners to allow breast-feeding on their property. A measure promoting the public paddling of juvenile offenders was high on the legislative agenda last year. A bill now heading for Wilson's desk will declare San Joaquin Valley dirt the official state soil.

This is arguably a slight improvement over the bill offered a few years ago that sought to make the banana slug the official state mollusk. And the legislature has shown a few signs of being slower to impose new regulation. But on the biggest issue of all—taxing and spending—the new legislature flunked. The surging California economy is swelling state coffers with a huge unanticipated surplus, the first in 10 years. Suddenly the revenue available to be spent jumped by $1.4 billion. Assembly Republicans issued a pro forma call for a tax rate cut, but soon dropped the idea and joined Democrats in voting to spend virtually every dime of the new revenue. Instead of a genuine reduction in taxes, at the 11th hour the legislature passed a so-called middle-class tax cut consisting of the same gimmicks, such as child tax credits, as the federal tax cut bill. (By contrast, in 1987, the last time the state had a large surge of revenue, Californians enjoyed a $400 million income tax rebate.) The tax credits don't take effect until next year, and they will do little to restrain the growth of state spending. California's budget has grown by nearly $10 billion over the past four years. This is the most sober portent for extending the example of California to Congress. We simply don't have any good evidence yet that frequent rotation will lead to a reduction of government.

My persistent doubts about term limits arise for precisely this reason, namely, that term limits don't get to the heart of what ails our political life. The heart of the problem is an administrative state that has corrupted the legislative function, forcing legislators to be glorified civil servants rather than deliberative lawmakers and rewarding them for increased spending and additional bureaucracy. To the extent that tenure in office aggravates this problem, term limits are worth keeping and perhaps extending to Congress, but they are no substitute for the changes in public opinion that would be necessary to shrink the size and scope of government.

And we have not yet seen enough to know what unintended consequences might come with term limits in the long run. The forces of big government are irrepressible and may eventually prove adaptable to a term-limited environment. Californians have seen this before with reforms such as Proposition 13, a great blow for low taxes which nonetheless did not provide a lasting bulwark against expanding centralized government in California (and which in some ways made things worse; see "Pushing the Limit," November 1993).

Hence the most interesting question about term limits, and their final test, will be how term-limited legislatures adapt to the loss of "experience" and institutional memory. Term limit opponents are way too hasty in declaring victory on the issue of experience, because the place of experience in our political life is far from settled. You needn't believe that gridlock is good to divine a silver lining to the supposedly sorry circumstance of rookie legislators and staff who don't know how to work the process and meet the calendar.

"One good thing that term limits might do is force a debate about the level of complexity in our legislative institutions," says U.C.-Irvine's Mark Petracca. "Does the claim that issues are complex necessitate the kind of experience that can only be gained through long tenure in office? Or is it our complex institutional design that currently requires experience? I am suspicious about whether the complexity of the current legislative process was designed by the people who have been there for the last 30 years so that it is impenetrable to outsiders." Institutional complexity, Petracca notes, serves the interests of long-tenured officeholders, who can then market themselves to voters and special interests not only as indispensable to the legislative process but also as necessary ombudsmen for dealing with the administrative state they have conspired to extend. But it is not obvious that the process of legislating is *inherently* complex; the current complexity, Petracca suggests, is probably more a *deliberate* product.

Petracca thinks term-limited legislators eventually will change the legislative process to make it simpler and more accessible. "How much experience is necessary to redesign the legislative process in a way that is comportable to the characteristics of term-limited legislators?" he asks. The ability of less-experienced citizen-legislators to adapt to the legislative process will be an excellent case study of whether government has grown beyond the capacity of ordinary citizens to understand and reform. It will show whether democracy has diminished to the point where elections are merely ancillary to government, or whether elections are still at the heart of our democracy. For this reason alone —and no matter what the courts say about the constitutionality of Prop. 140—the experiment should be allowed to continue. (If the courts strike down Prop. 140, term limits advocates have prepared new initiatives they believe will withstand any further constitutional challenges.)

Meanwhile, Willie Brown, the career politician who helped spawn term limits, is having the time of his life as mayor of San Francisco. Democrats are back in control of the legislature, and spending is unrestrained. Was it all worth it, just to get rid of Willie Brown and exact revenge on the political class? The liberal machine in Sacramento sorely misses him, which suggests that the answer is yes. ◆

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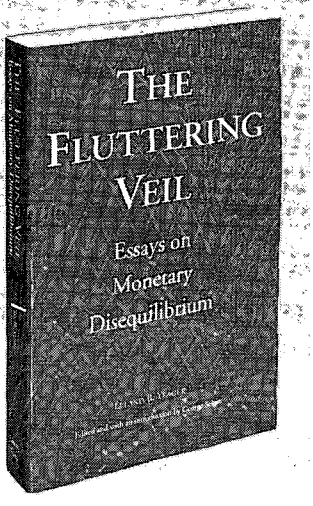
Essays on Economics and Liberty

The Fluttering Veil
Essays on Monetary Disequilibrium

By Leland B. Yeager
Introduction by George Selgin



Money's unique and essential role in a free market and monetary disequilibrium as the root cause of the business cycle are principles central to the work of economist Leland Yeager. For three decades he has extolled the preeminent importance of money as a source of economic fluctuations whose influence goes well beyond mere changes in interest rates or the price level. Yeager's work discloses the disruptive consequences of "monetary disequilibrium," or an imbalance of money supply and money demand. Consequently, he argues that well-designed monetary arrangements and policies are important to the success of any free-market economic system. Similarly, he insists that defects in the existing monetary arrangements in "capitalist" countries are manifestly not inherent in capitalism but are "alterable consequences" of the misguided or even mischievous interventions of government. The eighteen essays address four general topics: "Monetary Disequilibrium and Its Consequences"; "Monetary Misconceptions"; "Keynesianism and Other Diversions"; and "Avoiding Monetary Disequilibrium." In his Introduction, Professor George Selgin explains why "our understanding of the monetary foundations of a free society owes a great deal to the writings of Leland Yeager."

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Wages of Sin

Freedom can hardly be used very freely when a person's mind and spirit have been warped by a system which limits the range of his choices in order to maintain itself. That is, you're hardly exercising a real choice by picking among a set of gimmicks promoted by business to make you feel you have a choice.

—Robert Goodman, *After the Planners* (1971)

Legalized gambling is a highly controlled, monopolistic business that preys on the most vulnerable people in our society. There is hardly much free choice when jobs are scarce or don't pay well, and when government and private casino companies spend hundreds of millions of dollars on behavior modification studies and advertising to tell people they can change their lives through gambling.

—Robert Goodman, *The Luck Business* (1995)

THE NOT-SO-SECRET AGENDA OF AMERICA'S ANTI-GAMBLING GURU

BY ROBERT DETLEFSEN

When the first of these passages was written, Robert Goodman was a self-described radical architect who was busy waging "guerrilla architecture...to promote the political consciousness of the people" and to "expose the repression of the established order." By the time the second passage appeared two-and-a-half decades later, Goodman had emerged as one of the most articulate, respected, and ardent opponents of the next great vice to come under intensive governmental scrutiny: legalized gambling.

One might think that Goodman's interests and objectives had changed substantially between his days as a revolutionary firebrand and a sober analyst, but as the passages quoted above suggest, there is a common thread: Robert Goodman's writings are a testament to his lifelong hostility to private property, the free market, and the idea that average people can be trusted to know what's best for them.

Yet since its publication two years ago, *The Luck Business: The Devastating Consequences and Broken Promises of America's Gambling Explosion* has become the bible of the national anti-gambling movement and a standard reference for journalists and politicians on both ends of the political spectrum. The cover of the paperback edition displays fulsome panegyrics from the *Chicago Tribune*, *The Baltimore Sun*, *The Boston Globe*, *The Washington Monthly*, and *The New York Review of Books*. As co-sponsors of the 1996 bill that established the National Gambling Impact Study Commission, charged with investigating the social and economic effects of legal wagering, conservative Rep. Frank Wolf (R-Va.) and liberal Sen. Paul Simon (D-Ill.) both cited chapter and verse from *The Luck Business* in numerous speeches before Congress.

Although he will have no official role on the federal gambling commission, which is just beginning its two-year inquiry into state-sponsored, commercial, Native American, philanthropic, and charitable gambling, Goodman's intellectual presence will be felt strongly. Indeed, Congress created the panel last summer after Goodman promoted the idea in *The Luck Business*.

It is easy to see why anti-gambling partisans—including conservatives who view gambling as immoral—would embrace Robert Goodman's writings. Much of the public debate over gambling focuses not on the question of whether people should be free to gamble but on how legal gambling enterprises affect state and local economies. There is by now a good deal of evidence to suggest that legalized gambling has

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led to job creation, enhancement of tax revenues, and the revitalization of depressed local economies. To cite one example, a June 1997 report on the effects of legalized gambling in Connecticut prepared by a consulting firm, the WEFA Group, concluded that "legalized gambling, primarily at Native American casinos, has been an economic engine for the State." According to the report, between 1991 and 1996, legalized gambling was responsible for a net increase of more than 22,000 jobs, which produced a $619 million net increase in wages and salaries.

Goodman, however, insists that nearly all of the economic benefits that are supposed to flow from casinos are illusory, while their social and economic costs are enormous. That this catastrophe-in-the-making has gone unrecognized is due in large measure, he avers, to the skillful waging of a massive propaganda campaign by the well-heeled gaming industry, which has managed to bamboozle gullible politicians into believing that gambling is a panacea for their states' economic woes.

GAMBLING OPPONENT ROBERT GOODMAN: "OUR PROBLEM IS NOT SIMPLY TO DESTROY CAPITALISM, BUT TO DO THIS THROUGH THE CREATION OF A CULTURE WHICH WILL NOT TOLERATE THE REPRESSIVE AND COMPETITIVE VALUES WHICH CAPITALISM HAS ALREADY INDUCED US TO ACCEPT."

According to Goodman, the consequences of this deception have been staggering: Local businesses are destroyed as gambling siphons away consumer dollars. State funds that could otherwise be used to support "industrial extension programs" are instead spent on advertisements aimed at enticing "the most vulnerable people in our society" to squander their hard-earned money on games of chance. As a consequence, claims Goodman, hundreds of thousands of people eventually become addicted to gambling, which leads to alcoholism, child neglect, poor job performance, family breakup, financial ruin, and even suicide. Young people are socialized in a culture of gambling, producing an explosion of illegal underage gambling and a new generation of compulsive gamblers.

Goodman's one-sided view of gambling's effects is echoed by advocacy groups such as the National Coalition Against Legalized Gambling. But Goodman insists that he is no mere political activist who is pushing an agenda. He means to be taken more seriously than that. During an appearance at the National Press Foundation in Arlington, Virginia, in January, he took issue with those who have described him as a journalist. "I am a *researcher*," Goodman declared.

But that assertion is strongly disputed by a number of prominent scholars who specialize in gambling studies and who question his bona fides (though the 60-year-old Goodman teaches environmental design at Hampshire College, he holds no advanced degrees). "Goodman is certainly not a researcher or an economist," says William Eadington, an economist who directs the Institute for the Study of Gambling and Commercial Gaming at the University of Nevada, Reno. "He's a compiler, and very much a journalist." Goodman's work is "not based on accepted economic theory," says economist Gabrielle Brenner of the Ecole des Hautes Etudes Commerciales in Montreal. "He doesn't seem to understand the most basic principles of consumer economics." Writing in the *Journal of Macromarketing*, David Rados of Vanderbilt University described *The Luck Business* as "a Halloween book, one that aims to frighten the reader but is marred by one-sided and incomplete arguments that will convince only the credulous." Experts in the field of gambling studies also note Goodman's failure to publish in peer-reviewed journals or appear at academic meetings.

Richard McGowan, a professor of economics at Boston College and a Jesuit priest, calls Goodman an "anti-gambling ideologue" who poses interesting questions about the societal impact of gambling but whose conclusions are based solely on personal bias. Goodman's work on gambling is case-oriented, which is a far cry from traditional economic analysis, McGowan explains. Modern economists who wish to study the economic impact of some phenomenon typically employ sophisticated quantitative methods, such as time-series analysis, regression analysis, and various types of formal modeling. In contrast, Goodman's method consists of selecting individual cases that confirm what he already believes and then drawing from them a set of predetermined conclusions. McGowan dismisses Goodman's approach as "methodologically unsound."

It is not mere academic snobbery that explains these scholars' harsh assessment of Goodman. Rather, Goodman invites such criticism by continually portraying himself as a disinterested academic researcher. For example, his latest venture is the "United States Gambling Research Institute," which he founded this year in Northampton, Massachusetts. A promotional brochure states that the USGRI will offer "critically needed objective information about legalized gambling" and "provide balance to the ongoing debate over new forms of legalized gambling." Moreover, the institute promises to "conduct original research and evaluate the work of other researchers." The opening sentence of *The Luck Business* announces that in "1992...I

became the director of the United States Gambling Study." But the official-sounding name of this entity is misleading. In reality, Goodman himself fashioned both the name and the "study"—and appointed himself director—with modest grants from the Aspen Institute and the Ford Foundation.

Even Goodman's critics, however, have failed to identify the motive that lies behind his anti-gambling zealotry. As Goodman is quick to point out, he himself is a gambler who enjoys "card games, mostly poker," so he is not opposed to gambling per se. Rather, Goodman objects to the "gambling industry"—and especially to the support he believes that industry receives from state governments.

In the concluding chapter of *The Luck Business*, Goodman argues that instead of allowing the states to "promote" gambling, the federal government should develop a national industrial policy that would favor "those technologies and industries that are most critical to the country's economic future, and...provide these industries with specially targeted government support, including outright grants for research and development, loan guarantees, tax breaks, tariff protection from foreign competitors, research at government labs, and guaranteed availability of government as a client and buyer of products." Even sympathetic readers may have been puzzled by the inclusion of this policy prescription in a book whose ostensible subject is legalized gambling. However, if one peruses *The Luck Business* together with Goodman's two previous books, it becomes apparent that his ultimate goal is to channel anti-gambling sentiment into support for centralized economic planning.

The Luck Business is best understood as a continuation of themes developed in *After the Planners* (1971) and *The Last Entrepreneurs* (1979). Goodman himself draws the thread, telling REASON: "The reason I got interested in gambling was that I was looking at what cities and states were doing to improve their economies. Quite a number of them had either gone into or were considering gambling as a form of economic development." Read in sequence, the three works suggest that Goodman's analysis of the economic effects of gambling is driven by his overarching commitment to a vision of planning and regulation that he calls "community socialism."

ROBERT GOODMAN INSISTS THAT HE IS NO MERE POLITICAL ACTIVIST WHO IS PUSHING AN AGENDA. DURING AN APPEARANCE AT THE NATIONAL PRESS FOUNDATION IN ARLINGTON, VIRGINIA, IN JANUARY, HE TOOK ISSUE WITH THOSE WHO HAVE DESCRIBED HIM AS A JOURNALIST. "I AM A *RESEARCHER*," GOODMAN DECLARED.

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That term is missing from *The Luck Business*, and also from Goodman's congressional testimony and numerous media interviews on the subject of legalized gambling. But it recurs throughout the two earlier volumes. Indeed, there is much in Goodman's pre-gambling *oeuvre* that foreshadows the methods and biases that would eventually inform his writing on gambling. In *After the Planners*, he abandons any pretense to objective scholarship, declaring at the outset that "it is no longer possible for us to masquerade as 'disinterested,' 'objective' professionals." (The book is dedicated to "all those brave people who won't put up with it.")

Goodman's goals are succinctly stated in dozens of passages such as this: "Our problem is not simply to destroy capitalism, but to do this through the creation of a culture which will not tolerate the repressive and competitive values which capitalism has already induced us to accept." And this: "[W]e must aim at creating a cultural existence, a way of life, which requires *just outputs*. For example, if a community decides that a better architectural environment or a better educational program is to be produced, its way of measuring the usefulness of these programs would not result from calculating how much more money will be made through 'keeping the workers happy' or by giving them more skills, but rather from evaluating the effects of a better architectural environment and better forms of education on the quality of people's lives."

Attention to "the quality of people's lives" is one of Goodman's central preoccupations. But "quality of life," like "social justice," is a notoriously slippery standard that usually means whatever the person invoking it wants it to mean. In Goodman's case, it clearly has nothing to do with the preferences of actual people as expressed in the marketplace. For example, if you derive pleasure from, say, drinking single-malt scotch or playing games of chance, you might think that having access to these things would enhance the quality of your life. But Goodman has long denied that individual persons are in a position to know best what is good for them.

Thus, when it comes to something like architecture, Goodman suggests in *After the Planners* that decisions about economic and even personal living arrangements are best left to collective political processes. He exhorts planning professionals to use their technical knowledge, and the authority it conveys, to transform societal values. "Design opportunities," he writes, "can be used as a way of explaining the advantage of community-ownership and management of all income-producing ventures—the factories, the housing, and the shopping places." Architects can further acquaint people with the satisfactions of community socialism by designing "communal buildings, where people share facilities and spaces, [which] would present an alternative to the present single-family house or apartment unit." Although he champions neighborhoods against technocracy, Goodman conjures a familiar tableau, that of the masses being disabused of their vulgar tastes and prejudices by a political cadre.

In *The Last Entrepreneurs*, Goodman deplores when businesses search for greater profits by moving plants and jobs from

states with high taxes and militant unions to low-tax, non-unionized states. Rather than acquiesce in a pernicious game of "regional rotation" among private firms, he urges policy makers to recognize that economic instability provides a rationale for increasingly aggressive state interventions. The possibility of widespread business failure should be seized upon as "the opening wedge to develop public, locally owned enterprises," including factories, energy companies, and banks.

Any potential resistance to such proposals could be countered, Goodman suggests, by using the example of existing state-run enterprises to win acceptance for the creation of more advanced forms of socialism. It is in *The Last Entrepreneurs* that Goodman reveals his nascent interest in legalized gambling, endorsing "the idea of linking state lotteries and gambling to the creation of other state-organized operations. While public gambling can hardly be considered a traditional path to socialism, it might be useful to consider it as a step....The problem is not getting more states to run gambling operations but how to refocus existing gambling enterprise to create more progressive forms of socialism. A regional socialist movement could use the precedent of government gambling operations to demonstrate that public ownership is no longer a radical departure."

These passages make clear why, in *The Luck Business*, Goodman reserves his harshest criticism for private, commercial forms of gambling—especially casinos. State-run lotteries are of interest only insofar as their worst features and practices can be used to smear commercial gambling enterprises. Indeed, one of the book's most striking characteristics is its refusal to acknowledge important distinctions among the various forms of legal gambling. Legal gambling enterprises in the United States have become extraordinarily diverse, encompassing pari-mutuel betting at horse and dog racing tracks, charity bingo, state lotteries, and commercial and Indian casino gaming. A recent addition to this mix is "convenience gambling"—the placement of slot machines and video poker terminals in restaurants, drug stores, and gas stations. Given such variety, it hardly makes sense to view gambling as monolithic.

The Luck Business, however, repeatedly makes invidious generalizations about "gambling" and "the gambling industry" on the basis of evidence drawn mainly from the experience of state lotteries. Thus Goodman criticizes public officials for spending huge sums to advertise and promote "gambling," without acknowledging that broadcast advertisements for *casino gambling* are generally restricted—and in no way sponsored—by government. And rather than draw attention to the fact that lotteries alone are creatures of the state, Goodman tries to portray "the gambling industry" as universally benefiting from "government subsidies." As happens throughout the book, a sweeping indictment is supported by anecdotal evidence from one small corner of the industry. Here, "government subsidies" turn out to be tax reductions for horse-racing tracks in half a dozen states.

All of this goes a long way toward explaining why Goodman, in his critique of legalized gambling, gives short shrift to the simple theory that people gamble because they regard gambling as a pleasurable form of entertainment. To Goodman, legalized gambling, like capitalism in general, is a system designed to enable business owners to oppress workers and exploit consumers. The fact that Americans paid 154 million visits to casinos in 1995 merely confirms the extent of their victimization. To see what people really want, we must look not to the votes they cast with their pocketbooks but to their involvement in mass political movements. Thus, insists Goodman in *The Luck Business*, it is "crucial to understand that gambling is spreading in America not because of a popular movement clamoring for more opportunities to gamble, but because of aggressive lobbying by the gambling industry and the promotional efforts of politicians."

Such an analysis leaves unanswered the question of why people gamble. Lobbying by casino developers can only have the effect of lifting government prohibitions against gambling. It cannot force people to the blackjack tables and slot machines. Casino companies, and the politicians who appreciate the tax revenues to be reaped from legal gambling, understand that a great many people like to gamble and that, if given the opportunity, they will.

Why people gamble has long fascinated social scientists, and there is a wealth of research on the matter, including a famous study by eminent sociologist Erving Goffman. In the 1960s, Goffman worked as a blackjack dealer and croupier in Las Vegas and concluded that gambling was a surrogate for the risk taking that has been removed from daily life courtesy of the modern, bureaucratic state. Similarly, other researchers, such as psychologist Igor Kusyszyn and sociologist Felicia Campbell, have concluded that gambling provides positive stimulation for participants.

In *The Luck Business*, Goodman ignores such work, presumably because it contradicts his view that bettors are suckers who approach gambling as an investment opportunity, rather than as a form of entertainment. That false premise becomes the launching pad for a wide-ranging critique of "the new culture of chance" and "the new speculators." The latter are middle-class investors who, during the 1980s and early '90s, joined the wealthy in pursuing "new strategies for speculating in real estate, the stock market, and collectibles." It troubles Goodman that during this period, "income for people with investments grew three times faster than for those who were working for their money." In the grand tradition of socialist populism, Goodman celebrates honest labor while denigrating idle speculation, and he warns that this "broad shift in the American economy toward popular speculation is directing increasing amounts of human and financial resources into unproductive activities." By Goodman's reckoning, the new speculators include casino gamblers, owners of mutual funds, and even children who "by the age of ten,... already know about speculating in old baseball cards, comic books, or Barbie dolls." To the list of dangers that the modern world poses to the spiritual health and well-being of our kids, Goodman adds the corrosive allure of "an old Mickey Mantle card or first-edition Superman comic book."

Of course, Goodman is not content to depict gambling as just another socially useless investment strategy. Gambling is worse than the others because it takes a huge toll in "social costs." We

learn, for example, that "the American Insurance Institute estimated that 40 percent of all white-collar crime had its roots in gambling"—an item subsequently repeated in *The Economist.* Trouble is, there is no such organization as the "American Insurance Institute." Goodman's citation on the matter uncritically passes on a claim made in an obscure publication. As for the 40 percent figure, it cannot be taken seriously: U.C.-Irvine criminologist Paul Jesilow notes that to arrive at this datum, one would have to identify all white-collar crime—a nebulous category that includes everything from a worker stealing a pencil from his employer to insider stock trading and antitrust violations—and ask all the perpetrators why they did what they did.

Goodman's tendentious use of statistics is nowhere more evident than in *The Luck Business*'s discussion of "problem gamblers," a group he says comprises "between 1.5 to 6.5 percent of the adult population." The notion that so-called problem gambling is sweeping the country as legal gambling becomes more accessible is perhaps the most potent weapon of those who deplore gambling's "social costs," which, says Goodman, include suicide, divorce, job loss, and the aforementioned "white-collar crime." But Goodman doesn't define "problem gambling" in *The Luck Business.*

In contrast to problem gambling, "pathological gambling" is a clinical term recognized by the American Psychiatric Association. Psychiatrist Richard J. Rosenthal defines it as "a progressive disorder characterized by a continuous or periodic loss of control over gambling; a preoccupation with gambling and with obtaining money with which to gamble; irrational thinking; and a continuation of the behavior despite adverse consequences." Recent studies estimate that between 1 percent and 3 percent of the U.S. population suffers from pathological gambling, though some psychiatrists argue that the South Oaks Gambling Screen —the questionnaire used to diagnose the condition—yields results that are over-inclusive. Moreover, the estimate includes not only the currently afflicted but also those who suffered in the past and have since overcome their condition.

Goodman allows that he "can't define [problem gambling] precisely." Problem gamblers, he says, include pathological gamblers and others with "serious" behavioral problems related to gambling such as chasing losses and borrowing money they don't repay. "Whether you're a pathological or problem gambler," says Goodman, "depends on how extreme your behavior is."

A book written to educate and inform—written, that is, "to provide policymakers and the general public with a more accurate basis for making their decisions" (to quote from the preface to *The Luck Business*)—would take note of all this. Goodman, however, tells us nothing of the disagreements among psychiatrists over the diagnostic criteria and prevalence rates for pathological gambling. Throughout *The Luck Business,* he uses "problem gambling" as a synonym for "pathological gambling," attributing to problem gamblers the dysfunctional characteristics that psychiatrists associate solely with pathological gamblers. And by citing the higher *problem gambling* rate, Goodman invites the reader to conclude that pathological gambling is much more prevalent than it really is.

Goodman's tactic of blurring distinctions so as to cast commercial gambling in a negative light is by no means confined to his writings. Appearing last December on *The News Hour with Jim Lehrer,* Goodman was asked to comment on the fact that Americans, according to interviewer Margaret Warner, "are wagering tremendous amounts of money, I think something like $480 billion wagered, more than they spend on spectator sports and music events and movies combined."

Here was a perfect opportunity to correct a common misconception about the economics of gambling. "Margaret," Goodman might have replied, "those numbers are apples and oranges. The amount of money wagered is many times greater than the amount of money lost (or spent). With casino games, between 85 and 95 percent of the money wagered is returned to bettors in the form of winnings. The wager figure is so high because the bettor's money is used many times. A gambler with $50 to bet on slot machines, for example, could stretch that money over the course of an entire day. By the time he was eventually cleaned out, he may have wagered more than $500. But he's only spent $50 out of his own pocket."

Instead, Goodman's response was to claim that the situation is considerably worse than Warner's numbers indicate, because "what we're getting, essentially, is a small group of people in this country wagering huge amounts of money, getting in trouble over their gambling, or wind [sic] up writing bad checks, going bankrupt, committing fraud, embezzling money from where they work."

TO GOODMAN, LEGALIZED GAMBLING, LIKE CAPITALISM IN GENERAL, IS A SYSTEM DESIGNED TO ENABLE BUSINESS OWNERS TO OPPRESS WORKERS AND EXPLOIT CONSUMERS. THE FACT THAT AMERICANS PAID 154 MILLION VISITS TO CASINOS IN 1995 MERELY CONFIRMS THE EXTENT OF THEIR VICTIMIZATION.

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To challenge the notion that casinos inject cash into local economies by encouraging people to increase their personal spending, Goodman invokes an iron-clad version of the "substitution effect," which holds that the money consumers spend on newly available goods and services represents money withheld from pre-existing businesses. For Goodman, a dollar spent in a new casino must come at the expense of some other establishment. Though plausible, this is not necessarily the case: Consumers can alter their work and spending habits and new

forms of entertainment can coexist with, and need not supplant, existing options.

In any case, worrying that consumers might decide to visit casinos in preference to non-casino hotels and restaurants smacks of little more than a desire to selectively protect certain businesses from would-be competitors. Isn't it true that every dollar spent on food served in restaurants is a dollar not spent on food sold at retail grocery stores? If we are willing to protect restaurants from competition with casinos, shouldn't we consider protecting grocery stores from competition with restaurants? Goodman's analysis raises such questions, but instead of confronting them directly, he breezily dismisses those who "maintain that the free market, not government, should dictate which businesses succeed and which fail." The criteria for selecting government's favored businesses are never spelled out.

What is more, Goodman's invocation of the substitution effect characteristically ignores the interest of the individual consumer. Economists Reuven and Gabrielle Brenner have noted that when people divert money from an established business with which they previously traded to a new competitor, they are expressing their judgment that the new product is more valuable to them than the old one. For government to deprive consumers of the opportunity to transfer their purchasing power in this way is to perpetrate an injustice against them. Dwelling on the effect of "substitution" on businesses, the Brenners point out, ignores the gain to society that comes from fulfilling consumers' wishes.

In the concluding chapter of *The Luck Business*, Goodman returns to the canard that all gambling enterprises—not just lotteries, but private gambling operations as well—are subsidized by state governments. "Gambling," asserts Goodman, has been adopted by the states "as a kind of ad hoc industrial policy." As an alternative to government support for this "parasitic economic activity," Goodman argues for an expanded industrial policy that would favor "productive enterprises." Since he furnishes no criteria by which we might distinguish the parasitic from the productive, we may surmise that by "productive" Goodman means those enterprises that produce things of which he approves. Calling an industry "parasitic" tells us nothing more than that the person using the epithet doesn't like that industry.

As the Brenners point out, "the truth is that the gambling industry is like any other entertainment industry. It uses hotels, machines, computers, video equipment, croupiers, and what not; new games as well as technologies for selling the games are being invented. There is no difference between this industry and, let us say, that linked with the production of operas, plays, or ballets—instead of hotels, theaters and concert halls are being built." What happens, the Brenners ask, when government restricts people's entertainment choices? "They either go elsewhere to spend their money, or they have less incentive to work."

One can appreciate the profound disappointment that Goodman must have felt when, instead of leading to "more progressive forms of socialism," state lotteries during the 1980s and '90s paved the way for a new form of *private* enterprise—casino gambling. At times it seems that what most upsets Goodman is not that hapless gamblers are losing their money, but that increasingly their money is, as he remarked on *The News Hour*, "going into the pockets of the people who run the gambling companies....Now, essentially, what we've done is privatized a sector of our tax system." Lotteries may be a bad bet for gamblers—they typically return only about half of the money wagered—but at least the money bettors lose goes into the state's coffers.

It seems unlikely that Goodman will succeed in his effort to lay the groundwork for a comprehensive national industrial policy—and ultimately, the "community socialism" that he championed in earlier writings. But he has already done much to shape the current debate over legalized gambling. By focusing on "gambling's broken promises," Goodman has succeeded in transforming what should be a personal-freedom issue into one dominated by macroeconomic considerations. Curiously enough, he has been assisted in this by casino executives, their lobbyists, and sympathetic politicians, who have proved quite eager to trumpet the economic benefits that gambling brings, but who have said little in defense of the proposition that taxpaying, law-abiding citizens have an inherent right to spend their time and money on pastimes that do no harm to others.

"GAMBLING," ASSERTS GOODMAN, HAS BEEN ADOPTED BY THE STATES "AS A KIND OF AD HOC INDUSTRIAL POLICY." AS AN ALTERNATIVE TO GOVERNMENT SUPPORT FOR THIS "PARASITIC ECONOMIC ACTIVITY," HE ARGUES FOR AN EXPANDED INDUSTRIAL POLICY THAT WOULD FAVOR "PRODUCTIVE ENTERPRISES."

The economic effects of the different forms of legalized gambling, considered in various contexts and circumstances, are empirical questions that await the federal gambling commission. Even an objective study, however, runs the risk of becoming overly preoccupied with gambling's economic costs and benefits—which can be quantified—while ignoring the not-inconsiderable benefit that people derive simply from being free to spend their time and money as they wish. The greatest danger posed by the National Gambling Impact Study Commission, however, is that it will embrace Robert Goodman's tactic of using anti-gambling politics as a vehicle for further expanding the power and jurisdiction of the managerial state.

Robert Detlefsen (rdetlefsen@cei.org) is a senior research fellow at the Competitive Enterprise Institute.

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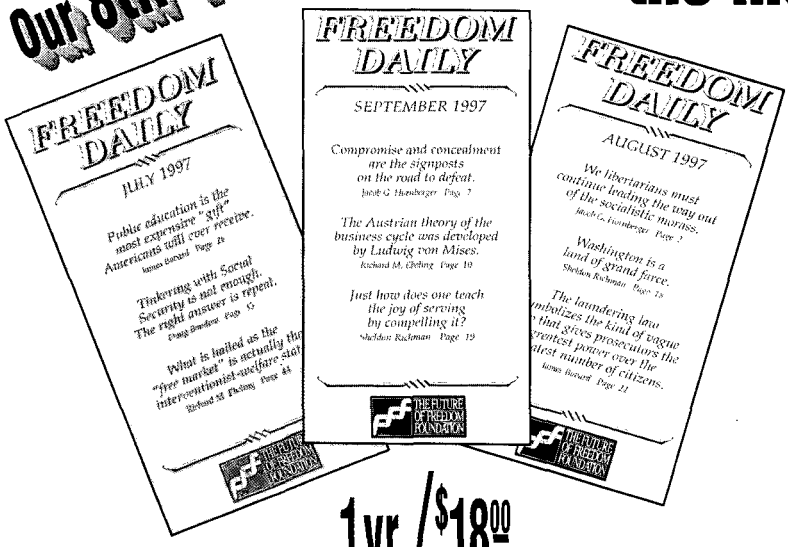
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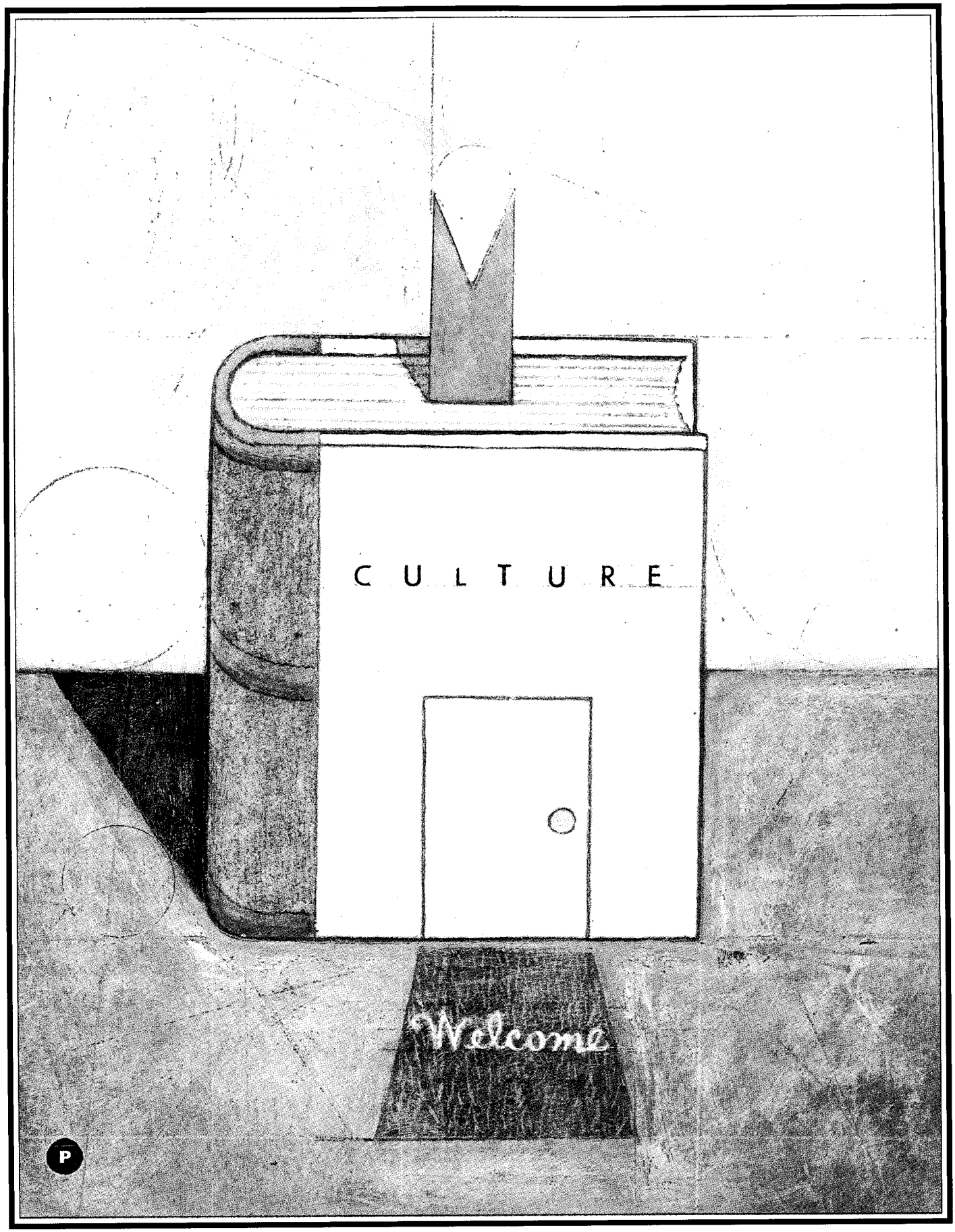

PETER BENNETT

Creating Culture

How to cultivate the arts when the old rules need not apply.

In recent years, the production of "culture"—art, music, literature, video, and other forms of creative expression—has exploded. There are any number of reasons for this, including technology that has dramatically lowered production and distribution costs, higher discretionary income, greater communication among peoples of the world, and the erosion of traditional "gatekeeper" authorities. REASON asked a number of writers, scholars, and new media specialists to recommend up to three books that explore, discuss, or exemplify the ways and means by which culture is, was, or could be created, circulated, and evaluated.

Nick Gillespie

Despite an assumed antagonism, the marketplace for culture shares a lot with the marketplace for less rarified goods and services. Both embody an unpredictable mix of creative vision, technological innovation, sweat equity, and luck (good and bad); both are characterized chiefly by failure and manage to support all sorts of losing ventures; and both tap into a basic, often unrealistic, human urge for risk taking.

At rock bottom, the artist and the entrepreneur face the same dilemma: In a world of prolific choice, how do I cultivate, hold, and grow an audience for what I'm offering? Relatively free and unregulated markets in culture and commerce alike have helped create so much stuff that we sometimes take our aesthetic bounty for granted, much in the same way we take a supermarket whose shelves are overpacked with food for granted. But of course food doesn't just grow itself, much less make its way to the corner store.

I suggest those interested in how culture is created, circulated, and evaluated in an open society take a look at the Beat movement, particularly its three best-known figures: Jack Kerouac, Allen Ginsberg, and William S. Burroughs

(the latter two of whom died just this year). Whether or not you care for their product, they provide a case study in the cultural marketplace: Like some ridiculously undercapitalized startup in an industry dominated by a few big firms, the Beats throughout the 1950s slowly built a market for themselves, eventually winning over an indifferent public, sidestepping a bellicose critical establishment, and even overcoming official state repression (Ginsberg's great poem *Howl* was the subject of a now unthinkable obscenity trial). True cultural entrepreneurs, they created the modern, wine-soaked poetry reading, utilized alternative publishing outlets (including the Pocket Poets Series started by poet and bookstore owner Lawrence Ferlinghetti), and tapped into a real yet inchoate demand for something different in American letters. In relentlessly hustling after a public, in drawing connections to the past while breaking with it, and in moving from the periphery toward the center of the literary world, the Beats exemplified the process by which culture flourishes when left to its own imaginative devices.

The Beat Scene (1960), edited by Elias Wilentz, is a contemporaneous (and often comically hyperbolic) assemblage of writing, photos, and commentary that captures the energy and appeal of the movement, along with its sense of community and propensity toward myth making. As their subtitles indicate, *Desolate Angel: Jack Kerouac, the Beat Generation, and America* (1979, 1990), by Dennis McNally, and *Memory Babe: A Critical Biography of Jack Kerouac* (1983), by Gerald Nicosia, focus on Kerouac, but both are excellent at tracing and explaining the various, dense, and often disturbing personal and professional relationships that helped create and promote what might be called the Beat franchise. For a taste of what people responded to in Beat writing, check out this alternative trio of books: Kerouac's *The Dharma Bums*, the 1958 follow-up to *On the Road* that illustrates how the Beats cross-fertilized and cross-promoted one another; Ginsberg's *Howl and Other Poems* (1956), which features a shrewdly legitimating introduction by William Carlos Williams; and Burroughs's *Junkie* (first published in 1953 under the pseudonym William Lee), a coolly compelling tour of the dropout demimonde that proved irresistible in Eisenhower's America.

Nick Gillespie (gillespie@reason.com) is a REASON *senior editor.*

Charles Paul Freund

"Culture is a process, not a fixed condition," writes Lawrence W. Levine in *Highbrow/Lowbrow: The Emergence of Cultural Hierarchy in America* (1988). Exactly. Control of that process is what America's "culture wars" have always been about. Levine's anti-canonical book describes the 19th-century cultural struggle, in which a moneyed and educated class took control of such once-popular forms as Shakespeare and opera, embalming them and arrogating to itself the arbitration of Taste.

Marxist critics regard this process as a form of class domination, but America's cultural gatekeepers usually use the arts as they do fashion and food: as levers of separation and status. Most people have by now been persuaded that culture really is a condition, one displayed in museums. The consequences of such cultural power are enormous. On the one hand, it underlies the pretensions (and budgets) of PBS and the National Endowments for the Arts and for the Humanities; on the other, it obscures the actual workings of a vital and creative culture that, because it is an essential force in everyday life, shapes history.

Culture begins in pleasure. A useful account of the foundations of vital 20th-century culture is David Nasaw's *Going Out: The Rise and Fall of Public Amusements* (1993). Nasaw's book is about the revolution in leisure made possible by rising wealth and technological innovation: dance halls, vaudeville, midways, movies, night clubs, etc. A paean to old urban downtowns, this academic work suffers from its belief that the last Golden Age is past, among other problems. But it has real value as a portrait of the birth and development of cultural forms.

An audience seeking enjoyment, and the new cultural industries anxious to provide it, nourished an array of novel musical, visual, architectural, and other styles. Some of these were eventually noticed by the arbiter crowd, who adjusted Good Taste to accommodate them. Jazz and film are standout examples of forms that were originally considered contemptible by tastemakers but which later emerged as capital-*A* art, to their frequent detriment. Architecture too has been transformed by the midway. While elite culture was withdrawing into an increasingly cerebral and opaque discourse, vital forms laid the foundation for a culture that was liberationist and filled with individual possibility.

Nowhere is the power of these forms more apparent than in their challenge to the century's tyrannies. A thoughtful examination of this reality is Thomas Cushman's *Notes From Underground: Rock Music Counterculture in Russia* (1995). It is worth remembering that while such high-end Western forms as classical music and art-house films were the stuff of "cultural exchange," rock music and Hollywood kitsch (to say nothing of jeans style) presented the Soviets with insuperable cultural problems and were significant factors in the withering of Soviet domestic credibility.

Cushman understands very well what was wrong with managed socialist culture, and he also understands the benefits—social, economic, psychological—of a vital and creative culture under capitalism. Yet he persists in regarding the market as another instrument of domination, because, among other reasons, it fails to reward truth telling for its own sake. But artists only became free (of the church, state, and bourgeois patron) when they assumed risk. Anyway, isn't it at the point where the teller's truth meets the listener's pleasure, in all their respective complexities, that the secret history of culture is told?

Charles Paul Freund (cpf@reason.com) is a REASON *senior editor.*

Omar Wasow

Andrea Rich, publisher of Laissez-Faire Books, once recalled the covert joy of reading early libertarian book galleys before they

hit the press and pitied my generation's lack of any equivalent insider experience. Stumbling on George Gilder's Web archive of recent writing, however, evoked precisely that same private exhilaration. Published originally in *Forbes ASAP* as a serialized version of his forthcoming book *Telecosm*, the Web archive gave me the sense of having discovered a secret gold mine. Though *Telecosm* is primarily about technology—and thankfully steers clear of Gilder's more peculiar notions of race and gender—Gilder fully understands the symbiotic relationship between high-tech and the creation of culture. Gilder hammers home the point that plummeting chip prices increase access to the toys of cultural production.

I first found Gilder's site a few days before a conference in Martinique. Curious about his work, I printed out the entire series of articles and lugged several hundred pages to the French West Indies. Between excursions to the gorgeous beaches, I devoured articles with titles only a nerd could love: pieces such as "Into The Fibersphere" and "The New Rule of Wireless." Unlike most technology writers, Gilder has a clear passion for the underlying scientific forces driving innovation. With arrogance and poetry, he brilliantly articulates a vision of the future of computing and communications.

Gilder leans heavily on the phenomenon of Moore's Law (which posits that chip prices will halve every 18 months). But his true insights revolve around dramatic improvements in communications technology (and the less dramatic, though nevertheless beneficial, changes in regulatory policy). Gilder argues that bandwidth costs are now falling even faster than chip prices, which in turn are leading to a "bandwidth tidal wave." As communication costs approach zero, the costs of distributing text, music, movies, and newer media will also drop precipitously. In the section "Life After Television, Updated" Gilder notes, "Today some 70 percent of the costs of a film go to distribution and advertising. In every industry—from retailing to insurance—the key impact of the computer networking revolution is to collapse the costs of distribution and remove the middlemen."

Will film studios, record labels, and book publishers disappear? I doubt it, but certainly ownership of shelf space, trucks, and burly men to move product will decline in importance, allowing for a far greater variety of creative content to reach mass audiences. In fact, I think we are about to witness an inversion of the meaning of "mass media." Where once mass media meant made *for* the masses, increasingly it will mean made *by* the masses. Whether you're looking at the impact of desktop publishing in nurturing underground 'zine culture or weighing how cheap synthesizers and DSP chips allowed multi-platinum rap acts to emerge from basement parties, it is clear that as the cost of creation and distribution gets cheaper, everyone becomes a media maker.

Gilder does a superb job of weaving into each tale of tech breakthrough a case for the moral and intellectual basis of free markets. Though he's too exuberant at times (one critic hilariously complains that "Gilder never met a technology he didn't like"), I found his energy intoxicating. Check out the site www.seas.upenn.edu/~gaj1/ggindex.html. Then do what I did. Go buy and read the rest of his books the old-fashioned way.

Omar Wasow (omar@nyo.com) is the founder and president of the Web site developer New York Online and a regular contributor on the cable TV channel MSNBC.

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Jesse Walker

The standard map of cultural production is vaguely Marxist. There is high culture, which is upper-class, individualistic, and arty. There is the people's culture: working-class, communal, and folky. And there is pop culture: middle-class, commercial, and crappy. In this model, pop culture is a parasite; it steals from both of its rivals, waters the booty down, and sells it all back to the compliant masses.

Let's start by admitting that there's some truth to that picture. But as relentlessly mediocre as the culture industry's products can be, some very good, very individualistic art does get made in those allegedly unlikely pop-culture settings. Spike Jones, Alfred Hitchcock, Philip K. Dick—there's a lot of great stuff out there in the so-called trash.

So the first "book" I'm recommending isn't a book at all. It's a CD, albeit with lengthy liner notes. *The Carl Stalling Project* (1990) collects scores composed for the great Warner Brothers cartoons of the '30s, '40s, and '50s. Performed in a symphony hall, this music would be considered wildly experimental—and some of today's most interesting avant-garde composers, such as John Zorn, have cited Stalling as an influence. Yet it is remarkably accessible listening.

The model breaks down in other places, too. It isn't just

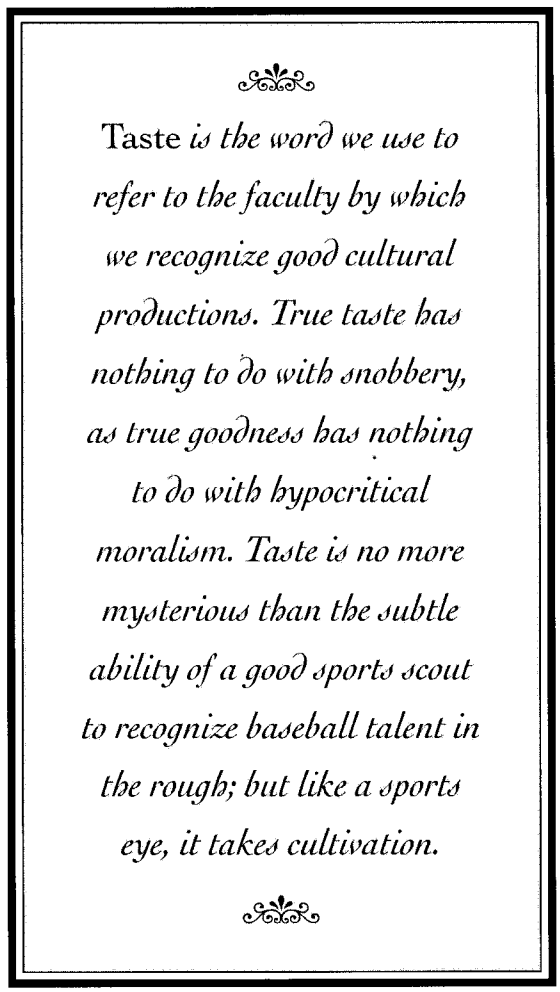
popular culture that raids its rivals for inspiration; highbrow and folk arts happily steal from commercial culture (and each other) as well. Actually existing communities (as opposed to the static entities of media myth) often appropriate the pop icons that they supposedly just docilely consume. In *Invisible Governance: The Art of African Micropolitics* (1994), David Hecht and Maliqalim Simone explore how Western pop detritus has fluidly mixed with African folk cultures, to the point where images from *The Little Mermaid* turn up at shrines to the mer-goddess Mami Wata.

But the greatest problem with the semi-Marxist schema is that it ignores art that is both autonomous and individual. Folk art must be communal and anonymous, the thinking goes; creative individuals require commercial sponsorship or aristocratic patronage. (The National Endowment for the Arts has presumably taken over the latter role.) So I'm tempted to suggest, instead of a third book, that you find a store that sells 'zines and there browse the wares of America's self-directed self-publishers. A lot of their stuff is crap, of course, but then, so are a lot of Random House titles.

But I do have a third book for you—a guide, of sorts, to the 'zine world. Bob Black's *Beneath the Underground* (1994) subjects the "marginals" scene to the kind of critical scrutiny it has thus far mostly escaped, and while I disagree with some of his conclusions, I nonetheless enjoy watching him reach them. Whatever you may think of Black's ideology or personal behavior, he approaches the critic's tasks with the well-honed, witty knife of a Twain, Bierce, or Mencken.

None of whom really fit into the standard cultural map either—but that's a topic for another time.

Jesse Walker is writing a history of the micro-radio movement and its historical predecessors.


Taste is the word we use to refer to the faculty by which we recognize good cultural productions. True taste has nothing to do with snobbery, as true goodness has nothing to do with hypocritical moralism. Taste is no more mysterious than the subtle ability of a good sports scout to recognize baseball talent in the rough; but like a sports eye, it takes cultivation.

Frederick Turner

Good art and bad art really exist; and there really is a faculty by which human beings can recognize the difference. Moreover, a life surrounded by good music, books, visual art, performance, and architecture is a better life than one that is not.

Taste is the word we use to refer to the faculty by which we recognize good cultural productions. True taste has nothing to do with snobbery, as true goodness has nothing to do with hypocritical moralism. Taste is no more mysterious than the subtle ability of a good sports scout to recognize baseball talent in the rough; but like a sports eye, it takes cultivation.

The conventional wisdom on culture is that, while the free associations of a market society can generate wealth, they cannot generate taste. Left to itself, the market creates only schlock and kitsch. Even good artists can be ruined by "selling out" to "commercialism." Thus the government must assure that the populace is culturally educated and that good artists are commissioned even if their works would not make it on the free market.

There is enough truth in this argument to make it a serious challenge. The burden of proof is on those who believe as I do, that a reasonably prosperous and stable free society, experiencing the economic progress and accumulation of wealth that the free market provides, will eventually create by itself the civil institutions of education and patronage that it needs for the production of culture.

Some might argue that institutions for the cultivation of taste, even nongovernmental ones, are unnecessary. But the problematic assumptions of this position are revealed by the new academic fashions of "cultural studies" and "popular culture" that celebrate the collapse of traditional canons of taste, reducing all works of human expression to the same level, and that offer only political correctness and gender/ethnic/class identity as ways to choose one artwork over another. Throw out the devil of the bureaucratic state and seven worse devils rush in, it seems.

The key recognition, it seems to me, is that cultural value and economic value ought to be connected—wealth over time creates taste, good taste can make someone wealthy, good art should be expensive, and the rich should become patrons of the arts.

The great cultural savants of the 19th century have given us some fine books—Friedrich Schiller's *Letters on the Aesthetic Education of Man*, Matthew Arnold's *Culture and Anarchy*, the cultural theory of Goethe, Hegel, Pater, Ruskin. They tell us much that is valuable about the amazing powers of art, the genuine reality of taste, the wonderful combination of the moral, the intellectual, and the aesthetic that characterizes high culture. But all their work presupposes the state, the politically centralized cultural nation. None of them realized that true political democracy would degrade the power of its elites and spend the grease of its cultural taxes on the squeakiest wheels of ethnic/gender/

disadvantaged grievance. Nor did they see that government-sponsored elites could themselves stunt and limit the culture they serve, like the Académie Française and the National Endowment for the Arts.

Thus, the best I can do is recommend cautiously some books that at least outline the minimum requirements for the development of taste.

The first is Virginia Woolf's *A Room of One's Own* (1929). Its value in this context is to show what Shakespeare's brilliant sister would have needed in the way of social encouragement, patronage, and education in order to contribute her genius to the culture at large.

The second is Victor W. Turner's classic work of comparative social anthropology, *The Ritual Process* (1966), which shows how the fundamental spiritual and aesthetic roots of culture are necessarily outside the realm of the official power structure.

The third is the complete works of Shakespeare, who is for me, with such figures as Verdi, Rembrandt, Dickens, Robert Frost, and J.S. Bach, and certain contemporary filmmakers, a touchstone for how great art that is popular and lucrative can emerge by demand from relatively free-market societies.

Contributing Editor Frederick Turner (fturner@mail.edt.net) is an internationally known poet and Founders professor of arts and humanities at the University of Texas at Dallas. His ninth book of poetry, Hadean Eclogues, *will be published by Story Line Press next year.*

Nathan Shedroff

I have always been interested in how technology and culture affect each other and, in particular, what the word *interactivity* really means. The more I read and experience, the more I've come to believe that culture is affected much less by technology than it *affects* technology. These five books—I never could follow directions very well—have helped me explore that relationship and isolate some central ideas:

Art and Physics (1993), by Leonard Shlain, is one of the most interesting books on how we've developed an understanding of our world. It is the best book on physics you will ever read—and the best one on art history. By digging into our past, Shlain gives you a sense of how the politics, emotion, theory, and inspiration of art, science, culture, and technology mix. Also look for his forthcoming book, *The Alphabet vs. the Goddess.*

The Meaning of Things (1981), by Mihaly Csikszentmihalyi and Eugene Rochberg-Halton, presents a taxonometric study of the relationships people have with things on many levels. They explore what—and why—objects have mere utility for some people yet are cherished by others; they examine how objects define us and are defined by us. While parts of the book get a bit off-track, the core research is important and fascinating.

There are many different cultures in what we call our society. The novel *Generation X* (1992), by Douglas Coupland, gives insight into the motivations, dreams, frustrations, and reactions of an important and growing segment of our society that is trying desperately to build culture. Most of us are too old, jaded, distracted, or ignorant to build culture from scratch. Instead, we tweak it from time to time as it flows by us, usually only choosing from the alternatives created for us. Don't read the story itself, but the stories within it. We build culture by telling stories to each other, and the characters in this novel successfully build their own culture in reaction to the one around them in a particularly interesting, inspiring, and emotional way.

Identity is an important part of culture, and ours is a culture that is increasingly allowing many different identities to coexist and thrive—even within the same individual. *Life on Screen: Identity in the Age of the Internet* (1995), by MIT's Sherry Turkle, explores how and why we build identities and how we use those identities to affect and integrate our cultures.

The Media Equation: How People Treat Computers, Television, and New Media Like Real People and Places (1996), by Byron Reeves and Clifford Nass, is a rare and disturbing look into the dynamics of power in culture and society—from intimate, personal interactions to those that affect our society as a whole. It will engage you, enrage you, scare you, and give you a sense of control over the invisible pressures you feel every day.

Nathan Shedroff is creative director of San Francisco's Vivid Studios. He maintains a Web site with resources and thoughts about interactivity at http://www.nathan.com.

Dana Gioia

Contemporary poetry mostly exists outside the marketplace. Thousands of new poetry collections appear each year, but most sell only a few hundred copies. Even critical successes achieve circulation mainly through compulsory sales to students. And yet a few poets still prosper by attracting a voluntary audience of readers willing to spend their hard-earned cash for the pleasure, enlightenment, and conciliation genuine poetry provides. I want to recommend three poets who in different ways have built considerable readerships without academic support.

My first recommendation is the late Philip Larkin (1922–1985), who is in danger of becoming academically respectable despite his unreconstructed Tory politics. Look for his *Collected Poems* (1989), but any of his books will serve as an irresistible introduction. Larkin published only four proverbially slim collections in his lifetime, but on the basis of that tiny output, he is universally recognized as the best British poet of the past half-century. Larkin's poetry, which is mostly in rhyme and meter, is often simultaneously heartbreaking and hilarious. "Deprivation to me is what daffodils were to Wordsworth," he once remarked. Near the end of his life, the queen offered him the coveted post of poet laureate, but he declined. "I dream of being poet laureate," he told reporters, "and wake up screaming." Larkin had the essential poetic gift for memorable language. He is one of the few contemporary poets whose work people know by heart.

My next recommendation is a starker poet: Weldon Kees (1914–1955). Although Kees has never been a big seller, his work

has steadily stayed in print—without any scholarly support—for the 40 years since his mysterious disappearance and presumed suicide. (His first editions, in fact, command huge prices in the rare-book market.) If Larkin is alternately wistful and stoic, Kees is wryly apocalyptic. You may have trouble finding a copy of his *Collected Poems*, even though the book was reissued both here and in England in 1993, so let me explain why searching it out will be worth the effort. There has never been an American poet with fewer illusions about life than Kees. He makes his tragic worldview, however, not merely compelling but darkly attractive. "It's good to be deaf," he observed, "in a deafening time." He is the laureate of gallows humor and fatalistic ingenuity. Academic critics have little use for Kees. He rarely appears in the official anthologies, but writers and artists adore him. For many readers, discovering Kees becomes a conversion experience; they are drawn completely into his imaginative world. (This is similar to what science fiction fans undergo reading Philip K. Dick—an experience that changes their notions of the medium.) BBC television even did a film, *Looking for Robinson*, depicting an obsessed British poet traveling America to search out clues about Kees's disappearance. Kees is a poet who requires a psychic warning label.

Finally, let me recommend Wendy Cope, a poet who offers pure pleasure. Cope is currently Britain's best-selling poet, but she remains almost unknown in America. She is probably the best living comic poet in English. She is also a superb love poet. Her first book, *Making Cocoa for Kingsley Amis* (1986), would be my top recommendation. Among its many delights are "Waste Land Limericks," which summarizes Eliot's Modernist classic in five bouncy light-verse stanzas, and "From June to December," possibly the best sequence of love poems written in the past 20 years—by turns comic, erotic, romantic, and vengeful. Cope is so ingenious and funny that you won't be able to read her alone. You will soon be in the next room or on the phone reciting her to someone else.

Dana Gioia is a poet and critic. He is the author of numerous books, including Can Poetry Matter?: Essays on Poetry and American Culture. *He lives in Sonoma County, California.*

Paul Shepheard

I know a man who does not like Shakespeare's plays. The unusual Elizabethan syntax throws him, and he will not learn how to listen to it. What's more, he insists that no one else understands it either. He says that anyone who says they enjoy Shakespeare is faking it. Why should they do that? Because they're snobs.

The last time we were trawling Walt Disney World's Epcot Center together, I tried telling him that everyone needs education. Education is the prime technology, the prime politics, and the prime defense against exploitation. "I agree," he said. "Everyone needs it. Conservatives need it to tell people what to think, socialists to tell people how to think. Fundamentalists need it to fill up people's heads until they can't think at all, and the market needs it to trick people into choosing one thing instead of another."

"And liberals need it, too," I said, because that's what I am. In England, a liberal is someone who wants a bill of rights to protect individuals against the majority. "Liberals need education because people need it. Without liberal education our beautiful, heterogeneous society, which has taken so much to construct, will dissolve back into tribal strife." He reached for his gun; he always does when I talk like that.

This is about the idea of education as cultivation, the bringing of wild minds to utility. It's an agrarian analogy, which reminds me of the culture dishes in the biology labs—which is agriculture of a different sort—and of Voltaire's gardens. If cultivation is what culture is, I think that means that culture is not something we all share. It means many things and has many modes. So what's my mode? Freethinking, by which I mean trusting my own insights to found my reasoning. Here are three collections of essays, from three sublimely cultivated minds, all of them profound freethinkers.

The first is William Hazlitt (1778–1830), the Enlightenment Age journalist who writes more buoyantly and transparently than any other writer in English I can think of. He describes the enormous 18th-century revolution in thinking as though it were a personal matter. His collected essays are published by Penguin.

The second is Gertrude Stein (1874–1946), the great modernist, whose writing is harder to get used to than Shakespeare's, but whose analysis of what modern thinking was about is astonishingly accurate. Her essays "What Is English Literature" and "What Is a Masterpiece" transformed my understanding of what art is. They can be found in the British collection *Look At Me Now and Here I Am* (1967), also published by Penguin.

The third is Robin Evans (1944–1992). He writes about material form; the difficulty of which is that the complex relationships embedded in it have to be teased out in sequence. He does this with a measured grace that is a joy to experience. His great quality is that even while he sports an erudition that would blow your head off, there is not a trace of false claims. His collection *Translations from Drawing to Building and Other Essays* (1997) is published by MIT Press in conjunction with the Architectural Association, London.

Paul Shepheard is an architect in London. He is the author of What is Architecture? *(1994) and* The Cultivated Wilderness *(1997), both available from MIT Press.*

Martha Bayles

How do we talk about popular culture? Too often, our praise is sheer self-indulgence and our blame a compendium of intellectual clichés half a century old. Let me illustrate not with examples but with counter-examples: three authors who treat popular culture with originality, intelligence, and taste.

Robert Warshow's *The Immediate Experience* was published in 1954, at the peak of the so-called mass culture debate. Unlike most parties to that debate, Warshow understood that while

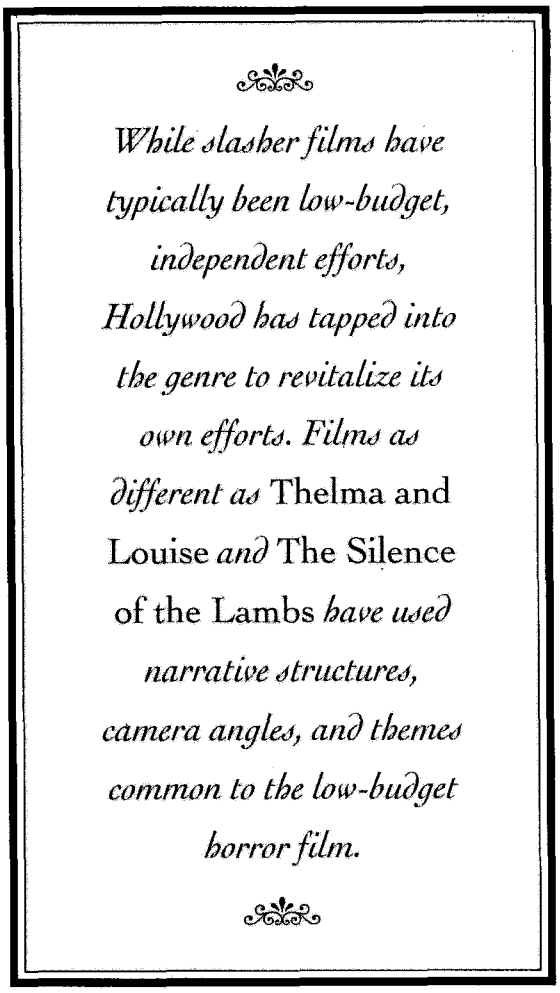
popular culture is a part of everyday life in a way that elite culture almost never is, our understanding of it cannot be reduced to sociology. For good and ill, popular culture claims our attention in ways that are more or less related to the claims of art. "I have not brought Henry James to the movies or the movies to Henry James," he wrote, "but I hope I have shown that the man who goes to the movies is the same as the man who reads Henry James."

Warshow also understood why so many intellectuals of the World War II generation refused (and still refuse) to acknowledge the artistic dimension of popular culture. Having witnessed the persecution of artists deemed too difficult for "the masses" and the forced imposition of a didactic "people's art," these intellectuals distrust all but the most rigorous aesthetic standards. The great irony, of course, is that "the masses" have never cottoned to the official culture fashioned for them by their totalitarian masters. Given half a chance, they have always gravitated toward the American alternative: a genuinely popular culture shaped not by ideological decree but by market forces.

On this subject I recommend S. Frederick Starr's delicious *Red and Hot: The Fate of Jazz in the Soviet Union* (1985). With a light touch comparable to that of Josef Škvorecký writing about the forbidden jazz bands of Nazi-occupied Czechoslovakia, Starr's history of the Soviet regime's efforts to suppress jazz is a case study of how impossible it is for any state, even the most repressive, to engineer the arts in its own image. A genuine art like jazz is no more susceptible to such treatment than is the ebullience of human nature it expresses.

As for the nature of that expression, it has never been described as superbly as by Henry Pleasants. In four impudent and elegant books—*The Agony of Modern Music* (1955), *Serious Music—And All That Jazz!* (1959), *Death of a Music?* (1961), and *The Great American Popular Singers* (1974)—Pleasants combines a blistering critique of post-Webern serialism with a sophisticated appreciation of jazz as one of the most viable musical languages of the 20th century. Pleasants's argument, written in the peppery style he developed during many decades as the music critic of the *International Herald Tribune*, partakes neither of the jazz buff's hyperbole nor of the academic's dissection. Instead, it carves out the precise position that jazz occupies in the musical canon of our century.

One cause of today's "culture war," I am convinced, is our abiding misunderstanding of what is good and bad about popular culture. We respect what we do not love and love what we do not respect. We argue bitterly in language fraught with myths and shibboleths. And we forget what these three writers are at pains to remind us: That it is we, the audience, who make or break the arts. Not in the short run, where too often we grasp at fool's gold. But in the long run, where gradually, with the help of our finest critics, we learn to recognize the 24-carat real thing.


While slasher films have typically been low-budget, independent efforts, Hollywood has tapped into the genre to revitalize its own efforts. Films as different as Thelma and Louise and The Silence of the Lambs have used narrative structures, camera angles, and themes common to the low-budget horror film.

Martha Bayles is the author of Hole In Our Soul: The Loss of Beauty and Meaning in American Popular Music *(1994) which has been re-released in paperback by University of Chicago Press.*

Charles Oliver

There's no doubt much American popular culture traffics in sex or violence. And for as long as there has been popular culture, there have been moralists who decry its effects on society. Fortunately, some researchers have bothered to actually examine such books, music, and movies—and the way audiences use these things. The two books discussed below provide a way of talking about sex and violence in slasher films and porno movies that is very different from the usual screeds against such seemingly unredeemable and undifferentiated "filth."

In *Men, Women, and Chainsaws* (1992), literature professor Carol J. Clover looks at some of the most disreputable movies there are, the slasher films so enjoyed by teenaged boys. She finds that, far from critics' assertions, these films don't invite the audience to identify with the sadism of the villain. Rather, the audience puts itself psychologically in the position of the suffering victims.

Clover came to that conclusion by literally watching teenagers as they view these films. What she found were not mindless zombies passively absorbing bloody images, but viewers who were aware of the conventions of the genre and who made watching such films ritualistic group activities: They talked to the screen and commented to each other on the action. Clover theorizes that such films offer moviegoers a way to deal with primal fears, especially their fear about the weakness of their own flesh. By identifying with the victims, viewers are engaging in empathy, not objectification. And, she points out, the appeal of these films reaches far beyond adolescent boys. While slasher films have typically been low-budget, independent efforts, Hollywood has

tapped into the genre to revitalize its own efforts. Films as different as *Thelma and Louise* and *The Silence of the Lambs* have used narrative structures, camera angles, and themes common to the low-budget horror film.

In *Hardcore* (1989), film theorist Linda Williams tackles pornographic movies and shows that not all sexually explicit films are the same. Over the 80-plus years of the genre's existence, it has undergone a number of changes, responding to new developments in technology, to social and legal acceptance of sexuality, and to the evolving nature of its audience.

The earliest stag films were one- or two-reel affairs, usually nothing more than visual dirty jokes. They were designed to be shown in male gatherings such as lodge meetings or bachelor parties. There's no mistaking them for the feature-length films that came of age in the 1970s and that are still staples of adult pay-per-view TV channels. These were to be shown in theaters, often to mixed audiences, and they mimicked standard film structures.

Neither stags nor features can compare to the loops shown in peep-show booths or the all-sex videos produced today. Each serves a different audience and each serves a different need. It's this focus on the role of the audience that is the most interesting aspect of Williams's work: She shows that the viewer is far from passive but is in fact an active interpreter of the images, using them not just for sexual arousal but also to deal with his or her own questions about gender politics and sexual identity.

Contributing Editor Charles Oliver (c-oliver@usa.net) writes for Investor's Business Daily.

If cultivation is what culture is, I think that means that culture is not something we all share. It means many things and has many modes. So what's my mode? Freethinking, by which I mean trusting my own insights to found my reasoning.

Brian Doherty

Cultural conservatives and NEA supporters may lament the fact for different reasons, but culture today is defined by a range of options that allows unprecedented room for more and more of anyone's version of the good, the bad, and the ugly. The contemporary scene supports an enormous range of cultural creators *and* consumers, and even carves roomy niches for commercially marginal products. Here are three books that give historical perspective, insider insight, and forward-looking examples of how our culture machine operates.

Two-Bit Culture: The Paperbacking of America (1984), by Kenneth C. Davis, tells the tale of a technological and marketing innovation—the paperback book—that changed the reading world by bringing both ancient classics and modern trash (and vice versa?) to more people more cheaply than ever before. Davis begins with the original innovator, Pocket Books, which started in 1939 with 10 titles that included Shakespeare's tragedies, an Agatha Christie mystery, Samuel Butler's *The Way of All Flesh*, and *Bambi*. "This undertaking," Davis writes, "was another amalgam of that peculiar American genius for combining culture, commerce, and a little technology.... [T]he world of books ...would never be the same." Davis shows how cheap production techniques and wide audiences make room for more of everything, and he ought to soothe many a cultural crank's fervid agonies over the coarsening and limitations of modern culture: It's all out there for the choosing. Of course, to some folks, that's exactly the problem.

Virgil Thomson: An Autobiography (1966), is an elegant and witty insider account of how to thrive while purveying arts that don't set the commercial world on fire—in Thomson's case, modern American art music. Thomson relied largely on the time-honored artist's perquisite of patronage from wealthy people; he also received some government funds through the New Deal Works Projects Administration, which fired the free-spirited Thomson when he took an unapproved trip to Paris in search of various artist friends and muses. He later became a well-known music critic for the New York *Herald Tribune* and even helped create a performance-rights society for composers. Thus this book serves as a thorough, if idiosyncratic, account of how the machine of uncommercial music operates. In the modern cultural cornucopia—even in the midst of the 1930s Depression—"uncommercial" music can survive, when people have the wherewithal to follow their eccentric tastes.

The Factsheet Five Zine Reader (1997), edited by R. Seth Friedman, is an anthology of writings from modern 'zines, that latest example of the irrepressible outpourings of ground-level culture in a society where the means of (re)production are cheap and widespread. Not everything in the book is great writing, by any means. But it's a zesty smorgasbord of what's out there among unedited, un-gatekeepered one-man "publishing companies." And the collection's very existence, published by a Random House subsidiary, vividly illustrates that the dominant culture barons are indeed open to invasions from those who start as outsider barbarians.

REASON *Assistant Editor Brian Doherty (bmdoherty@reason.com) runs Cherry Smash Records, a small independent record company.*

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All Things Dull and Ugly

By John J. Pitney Jr.

Back from the Dead: How Clinton Survived the Republican Revolution, by Evan Thomas, Karen Breslau, Debra Rosenberg, Leslie Kaufman, and Andrew Murr, New York: Atlantic Monthly Press, 289 pages, $24.00

Behind the Oval Office: Winning the Presidency in the Nineties, by Dick Morris, New York: Random House, 359 pages, $25.95

Trail Fever: Spin Doctors, Rented Strangers, Thumb Wrestlers, Toe Suckers, Grizzly Bears, and Other Creatures on the Road to the White House, by Michael Lewis, New York: Alfred A. Knopf, 299 pages, $25.00

Whatever It Takes: The Real Struggle for Political Power in America, by Elizabeth Drew, New York: Viking, 294 pages, $24.95

"All Things Dull and Ugly," the title of a Monty Python song, makes a tempting label for the 1996 presidential campaign. Each of the three major candidates was a rerun, as familiar as a Python routine but not nearly as funny. Ross "The Very Silly Party" Perot managed the feat of turning clinical insanity into a cliché. Bill Clinton made presidential sleaziness seem commonplace, even acceptable: "Wink, wink, nudge, nudge, say no more!" And poor Bob Dole found himself in a political version of the Dead Parrot Sketch. (This campaign is no more! It has ceased to be! It's expired and gone to meet its maker! It's kicked the bucket, shuffled off its mortal coil, run down the curtain, and joined the bleedin' choir invisible! *This is an EX-CAMPAIGN!*)

Writing a good, readable book about such an election is tough—but feasible. As Raymond Chandler said, there are no dull subjects, only dull minds. The 1984 election ended in a predictable landslide for Reagan, and it still yielded such worthy volumes as Peter Goldman and Tony Fuller's *The Quest for the Presidency 1984* and Richard Brookhiser's *The Outside Story*. This time, however, the literary world has fared less well.

First and least among the campaign books considered here is *Back from the Dead*. It consists of a main text by five *Newsweek* reporters, a foreword by Joe Klein (the "anonymous" author of *Primary Colors*), an afterword by Peter Goldman, and 75 pages of memoranda, mostly by mid-level campaign trolls. *Back from the Dead* confirms an old bit of Hollywood lore: A long list of writing credits suggests that a production is a patchwork mess.

The book's brevity (only 214 pages before the memoranda) stems less from succinctness than from superficiality. The authors' implicit message is: "We'd rather be doing something else, so we're trying to finish this damned thing as fast as we can." Instead of coming to grips with the remarkable historical forces that resulted in the re-election of a Democratic president and a Republican Congress, they concentrate on trivial tittle-tattle. Does anybody really want to learn about the backbiting between Don Sipple and Scott Reed? Does anybody even care who those guys were? (They worked for Dole, if you're interested, which I doubt.)

The authors have odd priorities. They devote an entire chapter to Colin Powell, who chose to stay out of the race, yet they scarcely mention Pat Buchanan and Steve Forbes, who actually won primaries. Their treatment of Forbes is especially deplorable. "The Forbes campaign deserves little more than a footnote in the history of politics," they say. "But it is worth looking back at as an object lesson in the effects of negative campaigning." That's nonsense. Alone among the GOP candidates, Forbes offered a program that was genuine (unlike Alexander's), coherent (unlike Dole's), and forward-looking (unlike Buchanan's).

When the authors do get the story right, they merely repeat things that political observers have long known. Over time, Clinton got better at acting presidential. Dole had honor but lacked vision. Gingrich made mistakes that hurt the GOP. And Dick Morris, the consultant who had guided Clinton since the early 1980s, gave cynical advice that enabled the White House to exploit Republican missteps. The book quotes Democratic pollster Pat Caddell: "When Clinton lost the [Arkansas gubernatorial] election in 1980, he sold his soul to the Devil, and the Devil sent him to Dickie Morris."

Perhaps he is not demonic, but Morris is definitely slimy. He originally signed a confidentiality agreement with the Clinton campaign, but right after it expired at the end of 1995, he weaseled his way out of signing an extension while secretly negotiating a $2.5 million book deal. When the deal became public, White House press secretary Mike McCurry said: "It does some violence to the concept of disclosure that we are attempting to establish." Ouch. Having "Stonewall" McCurry criticize your lack of candor is like having Mike Tyson disparage your table manners.

Morris's book, *Behind the Oval Office*, is revealing in a peculiar, unintentional way. A notorious tabloid story about his relationship with a prostitute ended his formal involvement with the Clinton campaign in August 1996. Morris writes that the trysts began in mid-1995, after President Clinton gave a Morris-inspired address about fiscal responsibility. Feeling a "sense of triumph," he thought he "could get away with anything." Only in Washington could someone regard a balanced-budget speech as an aphrodisiac.

In the text, Morris tries to stay in the good graces of future Democratic clients by explaining away his past Republican involvements (political, not sexual). He says he worked in the Jesse Helms 1990 re-election campaign because he "misjudged" the North Carolina senator. Yeah, right. By 1990, Helms had served for 18 years and had established a reputation for consistency, if not rigidity. Anyone who can work for both Helms and Clinton cannot care about principle, which is why Washington insiders tell this joke: "Why didn't the prostitute charge Dick Morris for her services? Professional courtesy."

Morris is still trying to butter up Clinton. Notwithstanding some mild pro forma criticisms, he heaps praise upon the president, including this jaw-dropper: "Lincoln and Clinton, it seemed to me, had a lot in common." That statement rings true only to those who can picture an evasive, lecherous, pudgy Lincoln.

Equally preposterous is this statement: "Race played no role in the 1996 presidential election even though anti-immigrant and anti-affirmative action ballot propositions threatened to make it the most racial of recent contests." Race played no role? In a way, it decided the election. According to the Voter News Service (a polling service jointly used by many news organizations) exit poll, non-Hispanic white voters favored Dole (46 percent) over Clinton (43 percent). The president won because of overwhelming support among blacks (84 percent) and Latinos (72 percent). In part, his margin reflected the longstanding Democratic advantage among ethnic minorities, but it also resulted from efforts to demonize opponents of racial preferences. While Democrats gained among voters who supported preferences, Republicans scored few points on the other side. Many stayed mum on the issue because they feared that Democrats would brand them church-burning bigots.

CHIP BOK

Morris is a man of some intelligence, and his book occasionally offers insights. Democratic political operatives, he says, "don't really know many Republicans well and often imagine them to be secretly evil." With his bipartisan experience, Morris understood how to flank Republican strengths and anticipate Republican weaknesses. After the 1994 election, he correctly argued that Clinton could dilute the GOP's appeal by embracing large portions of its policy agenda. And he also knew that Dole would flop with the tax issue—not because people liked taxes but because they doubted Dole would actually cut them.

Notwithstanding these spurts of straight political analysis, Morris's relationship with the truth was strictly a series of one-night stands. When he fell, many Democrats cheered. As Michael Lewis observes in *Trail Fever*, this response was "a reaction to being constantly told by people like Dick Morris that gray is white and two and two make five."

Based on a series of articles in *The New Republic*, Lewis's book is better than the Morris memoir or the *Newsweek* mishmash. Throughout 1996, Lewis hung around the edges of the presidential campaign, making witty, novelistic observations that other reporters envied. Indiana Sen. Richard Lugar "resembles a mechanical toy into which someone has inserted batteries one size too large." Alan Keyes, the black social conservative, "looks as if his joints could use a few squirts of WD-40." And Al Gore's conversation is "littered with 'frankly's' and 'to-be-honest-with-you's' and 'it-is-my-understanding's,' all of which translate into civilian English as 'I'm never going to tell you the truth about anything, so why on earth are you asking?' "

Lewis has a special affection for wheel magnate Morry "Grizz" Taylor, a minor candidate in the GOP primaries. Lewis calls the inarticulate Taylor "a truly representative citizen, who felt genuinely the same desires and ideals that motivate the mythical average American." Throughout *Trail Fever*, he uses Taylor's lack of political skill as a counterpoint to the more polished and manipulative figures in the campaign.

Unfortunately, Lewis carries this shtick too far, failing to note that Taylor simply did not know what he was talking about. He touted a demagogic protectionism: "Fair trade, not free trade—look out for Americans first!" And his "plan" for balancing the budget consisted of a proposal to fire one-third of federal managers, "starting at the top, but not anyone who is doing the work." In 1996, personnel costs for all civilian employees of the executive branch came to $73 billion, so

he could not have balanced the budget even if he had sacked everyone down to the lowliest clerk. Taylor made Perot look like the patron saint of exactitude.

In contrast to his gushing treatment of Taylor, Lewis heaps scorn on the other self-financed millionaire candidate, Steve Forbes. Belittling Forbes's support for supply-side economics, Lewis says the Reagan tax cuts "had no measurable impact on the economy's growth rate." Huh? Where was Lewis during the longest peacetime expansion in American history? Even if he had been in a coma throughout the 1980s, he still could have looked at Lawrence Lindsay's 1990 book *The Growth Experiment* for a thorough account of how the tax cuts stimulated economic expansion. Guess he was too busy reading Morry Taylor's wisdom.

Lewis makes fun of Forbes's nerdy manner without understanding that it was a tremendous political asset. After all, we nerds are the sleeping giant of American politics. Not only do we cast millions of votes, but we rule large sectors of the economy, such as computer software and biotechnology. Every time Forbes flashed his awkward smile on television, we saw our champion. Each one of us could shout, "*I am somebody!*"

Apart from its economic illiteracy and anti-nerd prejudice, *Trail Fever* is generally amusing. Alas, it is no more than that, since Lewis aspires only to serve up a plateful of smirks. In *Whatever It Takes*, Elizabeth Drew takes a different and more satisfying approach. At the outset, she explains her purpose by quoting anti-tax advocate Grover Norquist (See "Happy Warrior," February.): "This is not going to be a Presidential race—it's going to be a race for the House, the Senate, governorships, the state legislatures—and some butthead who wants to be President."

Instead of focusing on the campaign for the White House, Drew examines the struggle for control of Congress. Her main characters are the party leaders and their interest-group allies. The Republicans worked with organizations ranging from Americans for Tax Reform to the Christian Coalition to the National Beer Wholesalers Association. (If you wonder why the beer wholesalers are in the mix, remember that they work in just about every district and suffer badly when federal excise taxes go up.) The Dems had the AFL-CIO, the League of Conservation Voters, and Emily's List, a feminist group that "bundles" campaign contributions.

Drew's key insight is that the interests of the presidential candidate may clash with those of the party. By mid-autumn of 1996, it was clear that Bob Dole was crashing and that he could take congressional Republicans with him. At this point, Drew reports, Republican leaders and their coalition partners explicitly decided to ditch Dole and concentrate their resources on holding Capitol Hill. In the final days, the Republicans produced an ad that took Clinton's re-election for granted, warning voters not to give him a "blank check" by electing a Democratic Congress. Says Drew: "It was as close as the Republicans could come to not garrotting Dole publicly." On the Democratic side, President Clinton did eventually decide to devote party resources to congressional races—but only after his own re-election was certain. Congressional Democrats grumbled that an earlier and deeper commitment could have put them over the top.

At the outset, Elizabeth Drew explains her purpose by quoting anti-tax advocate Grover Norquist: "This is not going to be a Presidential race—it's going to be a race for the House, the Senate, governorships, the state legislatures—and some butthead who wants to be President."

Drew is generally fair, but her own political biases peek out at times, especially in her account of Dole's acceptance speech. He issued a rebuke of Boutros Boutros-Ghali that "was code for racism," and he "inexplicably attacked teachers unions." Drew's criticism rests on the dubious assumption that the world is better off because of the U.N.'s socialist bureaucracy and the NEA's choke hold on American education.

A more fundamental problem with *Whatever It Takes* is that it overemphasizes Washington. Drew does offer sketches of the national political conventions and the re-election races of a few House members. But most of the book describes who said what to whom at which meeting inside a Washington office building. If Drew had really taken Norquist's comments to heart, she would have gone to places such as Tallahassee and Sacramento, so that she could explain the historic shift of power in America's statehouses. Republicans made massive advances in the 1994 state legislative elections, in some states winning their first majorities since Reconstruction. In 1996, despite setbacks in California and a few other places, they kept most of these gains. And the GOP trend is even more striking at the gubernatorial level. Republicans now hold governorships in 32 states, comprising three-fourths of the nation's population.

The statehouse shift is crucial. With at least some federal power devolving to the states, Republicans are now in a better position to shape domestic public policy. And unless they suffer unexpected reversals, they will have enormous influence over the redrawing of congressional district lines after the next census.

What accounts for the depth and breadth of these changes? None of these four books comes close to answering this question, because they're mainly about personalities instead of ideas. A far-reaching account of recent elections would explain why Americans grew weary of government intervention and how Republicans appealed to that sentiment. It would also take a hard look at how Republicans are using their newfound power in Washington and the states, and ask whether they are botching their chance to bring about real reform.

To paraphrase an apocryphal Yogi Berra quotation, one can hear a lot just by listening. In the 1996 campaign, you didn't need to be an investigative journalist to tell that Bob Dole's brain was an idea-free zone: All you had to do was catch his disjointed speeches and shallow policy proposals. So here's an idea for would-be chroniclers of the next campaign: Forget about tracking the turf wars among staffers or finding clever ways to describe cheesy

political rallies. Instead, just heed what the candidates actually say. When they make sense, explain why. When they engage in flim-flams, expose them by checking their facts and analyzing their logic. Even the most insincere speeches are worth noting, because they have a way of haunting candidates after they take office. If you didn't get that, read my lips.

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Vexed by the Text

By Michael Greve

A Matter of Interpretation: Federal Courts and the Law, by Antonin Scalia, with Ronald Dworkin, Mary Ann Glendon, Gordon S. Wood, and Laurence Tribe, edited by Amy Gutmann, Princeton, N.J.: Princeton University Press, 159 pages, $19.95

The late Justice William Brennan's reputation as the most influential Supreme Court justice of his generation will soon belong, and should by rights already belong, to Brennan's staunchest opponent, Justice Antonin Scalia. This is good news for the Constitution—and, on the whole, for libertarians.

Admittedly, the comparison may seem inflated, or at least premature. During his 34 years on the bench, Brennan authored scores of path-breaking majority opinions, in the process creating a "Living Constitution" consonant with his egalitarian predilections. Scalia, in contrast, is known for his acerbic dissents and, especially during the past five years, has written few important majority opinions.

The Supreme Court's jurisprudence, however, provides ample evidence that Scalia has largely succeeded in his ambitious central project—the repudiation of Brennan's Constitution and the restoration of a jurisprudence grounded in the constitutional or statutory text. Not long ago, Supreme Court decisions routinely revolved around constitutional "values" or invented legislative "histories"; now, they typically follow the text of the law.

Legal scholars and journalists (even and especially those of a left-liberal persuasion) generally agree both on the increased salience of textual arguments in Supreme Court opinions and on the signal importance of this trend. Legal scholars and journalists such as the *New Republic*'s Jeffrey Rosen are now making a sport of lambasting Justice Scalia for *his* alleged "activism" and infidelity to textualist principles. Coming from long-time cheerleaders of the Court's flights into a wonderland of liberal "values," the criticism is noteworthy chiefly for its mendacity. Still, it illustrates the extent to which Scalia has managed to define the terms of the debate.

The legal and media establishments have been relentlessly hostile to Scalia's project, and he has had to make do with a sharply divided Court whose direction, such as it is, seems to depend chiefly on Justice Sandra Day O'Connor's intuitions and mood swings. Why, then, is textualism carrying the day? Part of the answer lies in the force of Scalia's argument. Another and probably larger part lies in Scalia's persistence and energy, his awareness of the limits of abstract theory, and his clear understanding of the political context within which the Supreme Court operates.

A Matter of Interpretation demonstrates both the attraction of Scalia's "textualist" theory and his qualities as a judicial statesman. It consists of Scalia's lecture by that title, along with responses by Laurence Tribe and Ronald Dworkin and essays by Gordon Wood and Mary Ann Glendon. (The book also contains Scalia's reply to his critics.) Scalia's elegant essay, the most concise and accessible presentation of his views, argues eloquently that judicial authority can only be based on the statutory or constitutional text; that words have an ascertainable meaning; and that a judiciary that invents law rather than applying it lacks legitimacy and threatens democratic governance.

Tribe's and Dworkin's responses illustrate the force of Scalia's theory. Both are notorious for urging judges to boldly go where none have gone before. Here, however, both profess an unflinching commitment to textualism. Tribe claims to "share with Justice Scalia the belief that the Constitution's written text has primacy and must be deemed the ultimate point of departure." Dworkin calls the idea of a nontextualist Constitution "hardly even intelligible" and huffily denies that he, or Brennan, or anybody else, ever endorsed such a notion.

They don't mean it. Dworkin maintains that the Eighth Amendment prohibition of cruel and unusual punishment renders the death penalty unconstitutional. This, he says, is "the most natural statement of what the authors of the Eighth Amendment intended to say," and never mind that several clauses of the Bill of Rights explicitly contemplate the death penalty. Tribe, while conceding that "nothing that is contrary to the text of the Constitution can be part of it," insists that the Constitution projects "a set of messages undergoing episodic revisions that reverberate backward as well as forward." Unfailingly, the messages coincide with the liberal cause du jour. Over the years, Tribe has peddled a half-dozen increasingly absurd arguments for *Roe v. Wade*. None has reverberated, but Tribe remains supremely confident that the right to abortion on demand is right there in the Constitution. As for the death penalty, Tribe is awaiting the next episodic revision to make up his mind. In short, Dworkin's and Tribe's textualist pretenses are a thin cover for their effort to mobilize the Constitution for left-liberal causes.

Once asserted, however, the pretense ensures that the debate will be waged on Scalia's textualist territory. This territory still leaves ample room for judgment (or manipulation), and judges will often disagree about the precise meaning of the text at hand. But as Scalia observes, once the central importance of the legal text is conceded, judges will at least argue about the right questions. Textual arguments

must eventually be contested on textual grounds, and this necessity has a constraining effect. On a Supreme Court that otherwise lacks an intellectual center, textualism has exerted a powerful gravitational pull.

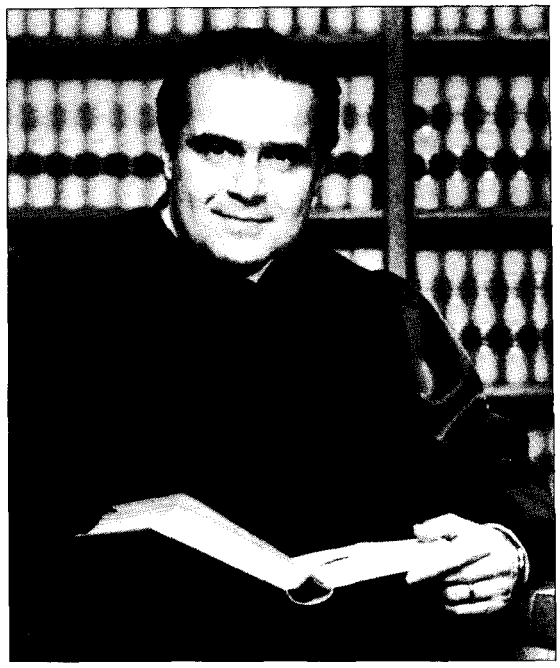
Generally, the pull has been in an antistatist direction, and this tendency flows directly from the theory. Scalia distinguishes textualism not only from a freewheeling Living Constitution but also from a crabbed notion of "strict construction." A legal text, Scalia observes, should be construed neither "strictly" nor broadly, but fairly. If the text itself fails to supply the answers (as is sometimes the case), the structure of the legal document and prevailing historical traditions are useful and legitimate sources of interpretation.

Scalia is not a libertarian per se. However, his understanding of textualism systematically drives interpreters toward results that are far more individualistic than judicial flights into constitutional values and emanations, which will almost invariably have a collectivist bent.

Once the Supreme Court strays from the text, it must find legitimacy elsewhere. It must build and maintain political support, and so constitutional law becomes another interest group racket. Brennan's Living Constitution was at bottom a campaign for the political support of the governing liberal elite and its favored constituencies—blacks at first, then other minorities, then women.

Even the Brennan Court's ostensibly libertarian commitments typically followed the dictates of egalitarian politics. Free access to abortion was thought to be good for women's liberation. Similarly, the Court expanded (some) First Amendment rights, first, because a "robust dialogue" seemed to favor the downtrodden and, second, because spouting off is how intellectuals—the Brennan Court's base of support—earn their living. When it came to the free speech of, for example, political campaign contributors, Brennan ditched the First Amendment (tellingly, over Scalia's strenuous objections). And now that civil rights groups no longer like free speech (because someone else seems to be winning the debate), Brennan's disciples are pushing speech codes and "harassment" regulations, on the theory that speech that isn't nice to women and racial minorities isn't really speech.

Scalia, in contrast, has upheld traditional First Amendment rights against "hate speech" regulation (*RAV v. St. Paul*, 1992). He dissented when a coalition of abortion enthusiasts and The-State-Can-Do-No-Wrong conservatives on the bench ran roughshod over the free speech rights of abortion protesters (*Madsen v. Women's Health Center*, 1994). He dissented when the Court curtailed the constitutional right to confront one's accusers in child abuse trials (*Maryland v. Craig*, 1990). And in *Lucas v. South Carolina Coastal Council* (1992), the most important "takings" case of the past decade, Scalia engineered a partial reconstruction of constitutional protection for common-law property rights, while his evolutionist brethren denounced private property as a menace to global survival. In short, since the constitutional text is far more individualistic than the evolutionist's political commitments, textualism favors individualism while constraining egalitarian usurpations.



Antonin Scalia's textualism drives interpreters toward results that are far more individualistic than judicial flights into constitutional values and emanations, which will almost invariably have a collectivist bent.

The trouble with textualism is that it may not be *enough* of a constraint. Ronald Dworkin can turn any statement on its head; willful judges can turn any theory into a joke. Interpretive theory has its limits. Scalia is acutely aware of this difficulty and tries to meet it with an explicitly political argument: The continued invention of extra-constitutional rights, Scalia warns in *A Matter of Interpretation*, may trigger a majoritarian response. "At the end of the day," he writes, "an evolving constitution will evolve the way the majority wishes." Scalia does not *advocate* a majoritarian backlash. Rather, he invokes it as "the only thing that will strike fear in the hearts" of liberal judges and, consequently, force a return to constitutional norms.

Scalia is exactly right in observing that politics, not theory, is the ultimate constraint on wayward judges. He is equally correct in observing that a Living Constitution under majoritarian auspices can't possibly be good for individual rights. Still, the point seems overdrawn: The public has been exceedingly tame in resisting the Court's usurpations on behalf of the powerful few. Scalia knows this; he muses that he may be "overestimating the democratic vigor of our institutions."

Scalia's ferocious dissents are designed to foster opposition to the Court's antidemocratic usurpations. In *Romer v. Evans* (1996), for example, the Supreme Court declared that the voters of Colorado could not bar the enactment of special "civil rights" protections for homosexuals. The majority did not bother to cite a single precedent or to marshal anything one might call an argument. Scalia met this ham-fisted decision with sarcasm, sneers, and an explicitly ideological critique. The Court, he pointed out, had chosen sides in the *Kulturkampf* and decided to protect the lifestyles of the Hollywood set against the preferences (in the Court's pernicious term, the "animus") of the neither rich nor famous.

Scalia's sharp tone has its drawbacks. For one thing, it occasionally detracts from his arguments—such as his point that the *Romer* Court, in its desperate urge to protect homosexual "rights" against "discrimination," ran roughshod over the voters' desire to protect the far more fundamental association rights of religious

citizens. Scalia's substantive arguments against the *Romer* Court's insulting description of such rights as "bigotry" should persuade anyone seriously interested in individual rights, but those arguments tend to get lost in his invective against the Court's "terminal silliness."

Moreover, Scalia's rude language invariably hurts Justice O'Connor's feelings. In *Planned Parenthood v. Casey* (1992), the Supreme Court opined that the constitutional "right to define one's own concept of existence, of meaning, of the universe, and of the mystery of life" precludes abortion restrictions that O'Connor considers an "undue burden." Scalia's brutal dissent openly questioned O'Connor's judicial competence. After this flap, O'Connor appears to have signed a Scalia majority opinion in only two contested cases (*St. Mary's Honors Center v. Hicks*, a mildly interesting case involving burden-of-proof questions in civil rights litigation, and *BFP v. Resolution Trust Corp.*, an impenetrable bankruptcy case). Since the conservative majority on the Court cannot prevail without O'Connor's vote, Scalia rarely gets to write a majority opinion in a controversial case.

It's hard to believe that Scalia ignores these costs simply to vent his frustration (though, in fairness, he could hardly have predicted that O'Connor would sulk for a full five years). Nor, contrary to frequent suggestions, do Scalia's classic dissents betray an uneven temperament; by all accounts, he is a good-natured fellow. While his outrage at the Court's escapades is real enough, his sarcasm and invective are calculated. Since he cannot *reason* with Imperial Justices, he must show that they are stark naked. The point is to attack not merely the Court's decisions but its legitimacy. The complacent public needs a wake-up call, preferably from the bench. If the other justices get rattled, so much the better.

Scalia has been compelled to write far too many angry dissents. The fact that he wrote *no* such dissent this past term suggests that his argument has begun to hit home. In the "right to die" cases, for example, a unanimous Supreme Court found that there is no constitutional provision to support a right to enlist one's doctor in killing oneself. This observation

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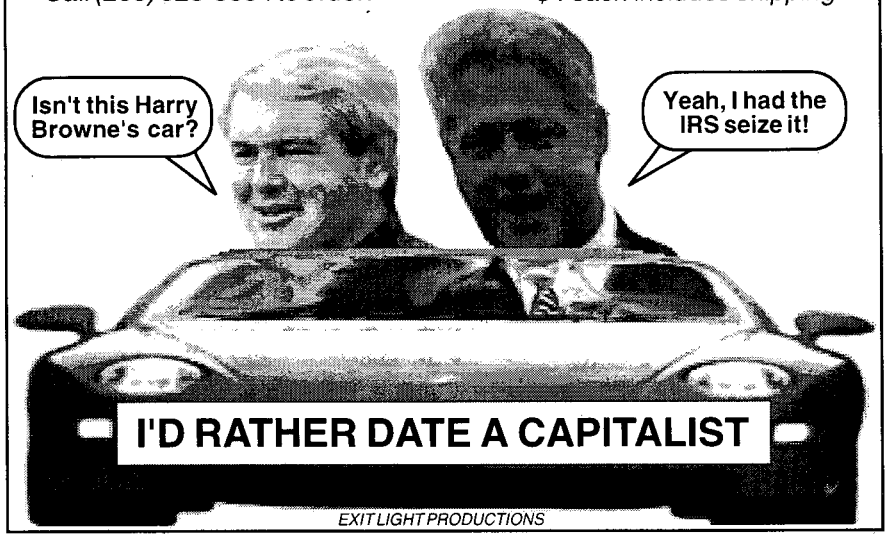
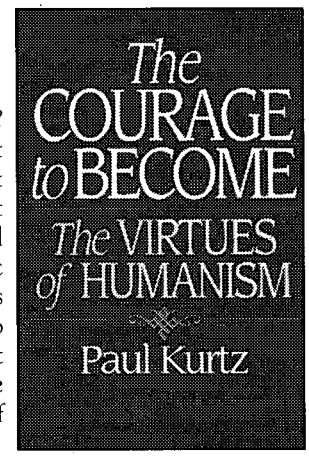


THE COURAGE TO BECOME

The Virtues of Humanism

by Paul Kurtz



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PAUL KURTZ is Professor Emeritus of Philosophy at the State University of New York at Buffalo. He is editor-in-chief of *Free Inquiry* magazine and Chairman of the Committee for the Scientific Investigation of Claims of the Paranormal.

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is correct—and a bit perplexing. There is also no constitutional basis to enlist a doctor's help in killing something that at some point is someone else, and yet *this* right (enshrined in *Roe v. Wade*) remains sacred. The Supreme Court's restraint in the right-to-die cases reflects not only the influence of Scalia's textualist theory but also, and primarily, his warning of a possible backlash.

If textualism is in one sense not enough of a constraint (thus requiring a political flanking maneuver), it is in another respect *too much* of a constraint. Under a textualist reading of the Commerce Clause, for instance, 90 percent of the federal government's business is flat-out unconstitutional, having nothing to do with the regulation of interstate commerce. But the Supreme Court cannot single-handedly repeal the New Deal, much as this prospect may cheer readers of REASON. Among other things, the justices must take account of six decades' worth of precedents.

In *A Matter of Interpretation*, Scalia allows for precedents and *stare decisis* as a modification (but not a part) of his interpretive theory. He outlines a few rules indicating when the Court may or should overrule precedents, mostly those that are clearly wrong and lack an extended pedigree. Ultimately, Scalia suggests that textualism's utility lies primarily in preventing *new* judicial departures into outer space. But this defense is a bit lame. It suggests that we must live with rules that are anti-democratic and wrong—and predominantly based on egalitarian preconceptions.

Scalia would find more favor among libertarians if he pushed textualist arguments further and harder, precedents be damned. And in truth, his opinions have been more ambitious than his circumspect essay would suggest. *Printz v. United States*, decided last June, is one of Scalia's rare majority opinions. (O'Connor signed the opinion but, true to form, submitted a separate concurrence.) The decision struck down the federal Brady Act, which directed local sheriffs to conduct background checks on would-be gun purchasers.

Fearful of producing a full-scale confrontation with Congress, the Supreme Court had in earlier, similar cases shied away from a direct examination of whether Congress possessed an "enumerated power" to legislate and instead asked the narrower question of whether the 10th Amendment permitted Congress to "commandeer" the states in the exercise of its powers. The 10th Amendment, however, says nothing about commandeering. It reserves to the states or to the people powers not granted to the federal government, thus reaffirming the "enumerated powers" doctrine the Court has tried to skirt.

Scalia's ingenious *Printz* opinion admits as much and instead bases the decision on the *structure* of the Constitution. This structural argument affirms a robust notion of dual sovereignty between the states and the national government. In the end, Scalia even maintains that Congress lacked the power to enact the Brady Act under, of all things, the Necessary and Proper Clause—thus suggesting, for the first time in a "commandeering" case, a resurrection of the enumerated powers doctrine.

Commenting from the bench, Justice John Paul Stevens compared the *Printz* majority opinion to Brennan's jurisprudence of extra-textual "penumbras" and "emanations." In the sense in which Stevens intended the point, it is cheap polemics. Scalia's structural argument reflects the *actual* constitutional structure, not some fanciful emanation. In going beyond the text and the precedents, Scalia brings the law back to the actual Constitution.

In a different respect, however, the *Printz* opinion does have a Brennanesque flavor. Brennan routinely laced his opinions with sweeping statements that were unnecessary to decide the case at hand. His brethren either failed to notice these land mines or neglected to defuse them on the spot, since they seemed so far afield from the constitutional ground the Court was then treading. But the charges often exploded in a later case, when Brennan, who always thought two or three cases ahead of his colleagues, would cheerfully invoke his earlier, expansive *dicta* as well-settled law. *Printz* has the same quality. Its expansive pronouncements are not the holding of the case, but they open up broad opportunities for a reconstruction of constitutional principles. Open to question as a matter of precedent, the opinion is a masterpiece of judicial statesmanship.

"With five votes, you can do anything around here," Brennan once candidly summed up his "jurisprudence." Scalia has spent a good part of his career articulating a coherent theoretical response to a five-vote tyranny. This theory is bringing us a long way from the Living Constitution and back to the far more individualist, libertarian Constitution that we actually have—both on account of textualism's inherent attraction and because Scalia, like his arch-foe and fellow Catholic William Brennan, understands that great justices are like great popes: While they cannot be great without a coherent view of the world, they are in the end admired not for their theoretical contributions but for their statesmanship and their ability to bend institutions to their will. Antonin Scalia, like his pope, is well on his way to greatness.

Michael Greve (cir@mail.wdn.com) is executive director of the Center for Individual Rights in Washington, D.C.

Coloring Crime and Justice

By Daniel D. Polsby

Race, Crime and the Law, by Randall Kennedy, New York: Pantheon Books, 538 pages, $30.00

Less than 2 percent of Americans are directly involved with the criminal justice system at any given time. This includes all the players—criminals, police officers, judges, lawyers, and corrections officers. Despite that small number, criminal justice is still one of the indispensable adhesives holding society together. If

the product of the system is seen as tainted or in meager supply, it can have baleful effects on citizens' attitudes toward themselves and each other, and can influence how they behave in public. When that famous Simi Valley jury refused to convict Rodney King's attackers, the whole country gasped and South-Central Los Angeles and Koreatown burned. When, several years later, an even more famous California jury refused to convict O.J. Simpson, the whole country gasped again and—well, Beverly Hills and Brentwood were not torched, but American race relations took a sharp turn for the ugly.

White Americans saw two things: O.J. Simpson was obviously guilty, and African Americans were celebrating his escape from justice. *Celebrating!* Dancing the "freedom dance along with my sisters and brothers all over the world," in the odious words of George Washington University law professor Paul Butler. That verdict raised unsettling questions about the future of American race relations, as it seemed justice could mean different things to people, depending primarily on whether they were black or white.

Race, Crime and the Law is meant to calm those troubled waters. The book considers the difference that race makes to the experience of individuals and communities with the criminal justice system. It is the soberest and most compendious treatment of this question yet written. As its author, Harvard law professor Randall Kennedy, argues, race always has mattered greatly, and it still does: to the police, to courts, and to the rest of the justice system.

Race matters first of all with respect to whether one becomes entangled with the system in the first place. After one is involved, race also affects how cases are handled and disposed of. Most of the book rehearses the considerable evidence for these propositions, knitted together by a narrative dedicated to creating rapprochement between the various antagonists—ideological, political, and racial—who share a concern about the problem of race and crime.

It's a tough task Kennedy sets for himself. He tries to bring "law and order" conservatives into the same conversation with libertarians. He tries to bridge the divide between the races, and between political

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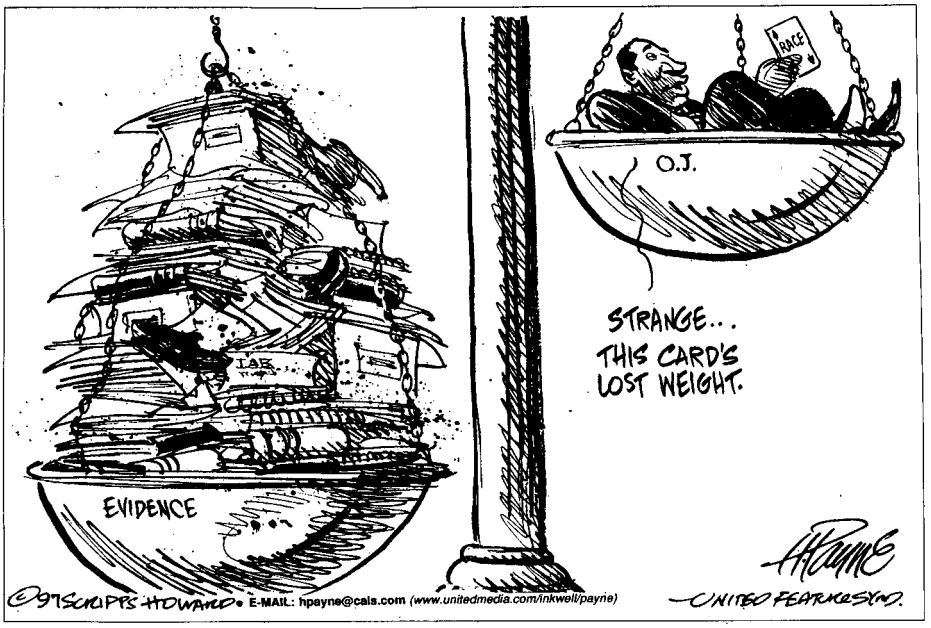
entrepreneurs whose exclusive objective is to advance what they see as the interests of minority communities specifically and those who have concluded, for any number of different reasons, that racial sorting has lost any use it might ever have had for improving the quality of American community life. While success in bridging all those gaps is nearly a hopeless prospect, at least for the present, Kennedy tries admirably.

His basic strategy is to insist that for all the serious, race-linked shortcomings of American criminal justice, it is the only game in town, and that African Americans above almost all others have a stake in a tough and effective system of law enforcement. Most of the racially objectionable impacts of the legal order can be ameliorated, Kennedy argues, if racial categories are rigorously and actively exorcized from the criminal justice system. Race should be used neither as a criterion of jury selection nor as a criterion of police suspicion. When racial disparities turn up in criminal dispositions, as with the death penalty, a presumption of invidious discrimination should be entertained. Juries must not engage in race-based "nullification" (that is, acquitting an obviously guilty defendant for reason of policy or politics). Judges should discourage attorneys representing black defendants from "playing the race card"—that is, inviting jury nullification or inflaming racial passions.

It is hard to disagree. *Race, Crime and the Law* is a thoroughly, and characteristically, decent performance, by a scholar and teacher who has achieved great distinction by patiently expounding on the vices of racial sorting and promoting the ideal of treating people as individuals rather than as vectors of some abstract, mandatory racial identity. But there remain serious questions—not so much about Kennedy's aspirations for our country as about the means he offers for getting there.

Many of the things Kennedy rightly says the justice system must not do with race, it is already forbidden to do (or does not do anyway). It is, for example, already unconstitutional to use race as a criterion of jury selection; the trick is to figure out when peremptory challenges are being used in a race-conscious way. In most situations it is probably unconstitutional to use race as an element in a "suspect profile"—that is, a formal protocol that law enforcement agencies might use to focus suspicion on someone who has not actually engaged in suspicious behavior. But what can be done about the private, unofficial profiles that officers carry around in their heads? It is surely unattractive and often destructive for lawyers to "play the race card" in criminal trials, but trial judges already have the authority to prohibit overtly racial appeals to jurors. Of course judges vary in quality—and on average they are merely average—but there is little one can do about that. Similarly, judges are not required to inform jurors, or permit counsel to inform them, of the jury's nullification power, which allows them to acquit notwithstanding the evidence.



HENRY PAYNE

In most of the obvious and easy-to-fix ways, America has cleaned up its racial act. Public opinion no longer tolerates overt racial prejudice. Even an isolated off-color joke, insensitive remark, or, for that matter, the affirmation of a nonderogatory stereotype (for example, that blacks are innately gifted basketball players) could cost a prominent person his job and his respectability. Law enforcement officers nowadays are at risk of a prison sentence if, in laying hands on a black suspect, they seem to display racial animus. And yet racial polarization over issues of justice stubbornly remains.

Instead of disappearing from the world of criminal justice, race has been driven into the shadowlands of the tacit, where it is difficult to identify and intercept. Police officers are required to have articulable suspicions before stopping a suspect for questioning. A black man in a white neighborhood may not be stopped and questioned merely because of his race, or detained if he refuses to identify himself or give a satisfactory explanation of his presence. On the contrary, for more than a generation courts, including the U.S. Supreme Court, have struck down all sorts of ordinances and statutes similar to vagrancy laws, not because officers had improperly arrested the suspect in the particular case but because the open-ended vagueness of such laws leaves too much discretion to police officers, who might be tempted to abuse it.

The law is clear enough, yet its ability to constrain how officers actually behave is limited. If an officer's arrest or questioning of a suspect is called into question, he will usually have enough sense to say that he became suspicious because the suspect was behaving nervously and furtively, or that he exhibited some suspicious congeries of other readily observable behaviors that could suggest trouble. The officer will know enough to leave race out of the accounting. In a given case, maybe that's the truth and maybe it's an undetectable lie. No one can tell. How should the law respond?

One can either decide that the system should not register instances of racism that

it cannot specifically detect (which is basically what we do now), or we can adopt inferential means of detecting that which we cannot observe. The much-discussed but never passed Racial Justice Act is an example of the second option.

The RJA, initially introduced in 1988 and eventually attached to (and then detached from) the 1994 Omnibus Crime Control Act, would have created a rebuttable presumption that statistical racial disparities in a given jurisdiction in charging capital crimes, levying capital sentences, or carrying out capital punishments were the result of unconstitutional discrimination. Before the state would be allowed to carry

Improving the racial justice of criminal law, or its justice in any connection, is a worthwhile objective in its own terms. But American race relations have many painful nodes. Not just the justice system, but the economic and political systems as well, often seem to produce tensions along racial lines.

out a death sentence, it would have to prove that racial motives had not been a determining factor at any point along the line.

At least when the subject is the death penalty, Kennedy is a believer in such inference-forcing uses of statistics; in fact he even goes so far as to claim, in the most unconvincing passage in the book, that a petitioner seeking to avail himself of the RJA's protection would face "an uphill climb." As a general principle, trying to sift patterns of arrest and prosecution for racially discriminatory motives that were impossible to detect directly but that might be revealed in racially disproportionate data is wildly unworkable. It would surely falter even in a justice system where there were no (or few) actual racial disparities in criminal behavior. But it would be down-

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right impossible in the real world, where such racial differences are very marked, especially in connection with the most serious crimes. If cops had to constantly consider statistical racial proportion in their actions, they would swiftly lose credibility and effectiveness. Cops would either have to arrest more evidently innocent white people or arrest fewer evidently guilty black ones.

We could explicitly legislate against the use of race in suspect profiles, but even explicit legislation would be bound to fail at street level. If such profiles are efficient (as Kennedy concedes they often would be), but it remains difficult or impossible to tell whether they have been used in a particular case, it is a safe bet that their use would continue, though protected with artifice, half-truth, euphemism, and outright lying. This is not the way things *should* be, but alas, under the circumstances, *should* has little power.

So we are left with a daunting practical problem with criminal justice in a culture riven by race. One cannot dispense with a justice system, but that system can only be perfected to a certain, not very satisfactory, point. One might take this situation as a cue to launch the postmodernist set piece, cobbling an overtly racist past together with a racially disproportionate present into a polemic for the quintessential illegitimacy of a (white) justice system attempting to adjudicate the guilt of non-white defendants. Arguments asserting the inadequacy of institutions dominated by whites to represent in good faith the concerns of minority constituencies are *à la mode* in contemporary universities, as the widespread influence of Lani Guinier's writings on racial gerrymandering will attest. Kennedy, to his great credit, seems not to have a trendy bone in his body. His old-fashioned sensibility allows him to see that apocalyptic contentions about the impossibility of sound race relations lead nowhere. Better to make what incremental improvements one can and keep on plugging.

Improving the racial justice of criminal law, or its justice in any connection, is a worthwhile objective in its own terms. Yet one wonders whether Kennedy overestimates the degree to which changes within the four corners of the legal system could bring about any meaningful or sustained sort of racial reconciliation. American race relations, after all, have many painful nodes. Not just the justice system, but the economic and political systems as well, often seem to produce tensions along racial lines.

Moreover, one cannot logically exclude the bleak possibility that, at the end of the day, what each race wants from the other in these various arenas will consist of things the other is not prepared to give. But Kennedy's arguments, at a minimum, push the conversation in a positive direction. It is not an easy thing to do in a book about race and crime, and we may be grateful for his accomplishment.

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The Truth Is Out There

By Charles Paul Freund

Conspiracy: How the Paranoid Style Flourishes and Where It Comes From, by Daniel Pipes, New York: The Free Press, 258 pages, $25.00

When the news broke that Diana Spencer had been killed in a car accident, one of the first reactions—before any of the facts of the crash were known, and in advance of the public convulsion of pop misery—was the enunciation of a conspiracy theory. A man in Australia almost immediately established "The First Diana Conspiracy Site." Note his assumption—quite correct, as it quickly turned out—that he was in a breathless race with other like-minded hosts for Internet conspiracy precedence.

This site instantly declared the accident to be "too pat and too convenient," and asked a series of purportedly urgent questions. Among them: whether the American tourist-witnesses on the scene were actually intelligence agents; whether CNN's focus on the pursuing paparazzi wasn't an intentional misdirection of our attention; and why the French emergency services hadn't operated on Diana in the middle of the road instead of wasting time getting her to a hospital. The site's prime suspect was the British government, so concerned about Diana's anti–land-mine campaign that it had no choice but to kill her.

But this was merely a conspiratorial hors d'oeuvre. In succeeding days, I heard through one means or another that Diana was really murdered because she was running around with a Muslim, and the prospect of the future King William having a Muslim half-brother was simply unthinkable to British intelligence agencies. Indeed, I was soon to hear that Diana was already pregnant at the time of her death. I also heard that the fatal Mercedes had been stolen shortly before the fatal crash and stripped; hence, the accident was self-evidently a case of sabotage. I learned about mysterious other cars speeding from the scene, about the driver's "controversial" physical condition, and about the bodyguard's "suspicious" memory. I "learned" much more that I've forgotten, which may be just as well because I also learned that Diana was really still alive and well. In any event, I have every anticipation of learning more such things about the Diana case at intervals for the rest of my life: Conspiracy theories frequently address death, but they themselves are immortal.

Some of the sources for this material—newspapers, talk shows, Web sites, acquaintances, etc.—believed that what they were passing along was true. For others, however, these reports seemed worth reporting because the content was so titillating, rather like outrageously tasteless jokes, or obscene gossip, or just as something to gawk at intellectually: ideas as a freak show.

So when Daniel Pipes writes in his stimulating new study of such ideas through history, *Conspiracy: How the Paranoid Style Flourishes and Where It Comes From*, that these ideas "constitute a quite literal form of pornography," his contention has to be

taken seriously. "The two genres became popular about the same time, in the 1740s," writes Pipes. "Both are backstairs literatures that often have to be semiclandestinely distributed, then read with the shades drawn. Elders seek to protect youth from their depredations. Librarians hold their noses....Recreational conspiracism titillates sophisticates much as does recreational sex. Artists explore conspiracist fantasies in a spirit akin to sexual ones."

Much of what Pipes is saying here about "conspiracism"—the belief in nonexistent grand conspiracies as the motive force in history—is unquestionably true, and indeed one could add to it. There is often a profane thrill to conspiracy talk: People may dismiss these theories as the ravings of lunatics, but frequently not until they've listened wide-eyed to a lengthy narrative. Sometimes this material can be appalling, especially when a history of evil criminality is attributed to members of a religious group such as the Catholics or (of course) the Jews. In these cases, one can come away from the material with a sense of degradation, precisely as in the case of the most debased kind of pornography.

And yet, Pipes's view of conspiracy thinking as essentially profane obscures its historical scope and, I believe, its actual heritage. When Pipes describes this material as largely debased, he is certainly right. But is it pornography?

Pornography exerts no power (except, perhaps, on the clinically addicted), whereas conspiracy ideas have been a shaping factor in history. Indeed, the story of that power is the heart of Pipes's own book. Pornography is remarkably short-lived; there are only a handful of pornographic "classics" that have retained any readership over the years. Conspiracy ideas, once in circulation, seem never to go away. That is because, while pornography "explains" nothing, but only titillates, conspiracy stories titillate, but "explain" everything. They put the world in a kind of order, however absurd it may be. What they most "explain" is why bad things have really happened, why evil appears powerful if not triumphant, and why the good have suffered. That is not the province of pornography: It is the work of theology (which is one reason that conspiracies are so often alleged in the sudden deaths of people who have been transformed by popular hagiography, including John F. Kennedy, Marilyn Monroe, and now Diana). Conspiracy is history as demonology; a secular occultism, the lunatic sublime.

Make no mistake, though: Pipes's is a valuable and much-needed book. Scholars usually shy away from these kinds of subjects despite their tremendous and continuing influence. Even when scholars do write such studies, they are apt to be embarrassed by their own interest and even to apologize for it in their books' introductions. The result is that, after 200 years of raging conspiracism and its frequently ghastly results, there are only a few serious, systematic studies of the phenomenon by English-speaking authors who know what they're talking about. Richard Hofstadter, Norman Cohn, James Billing-

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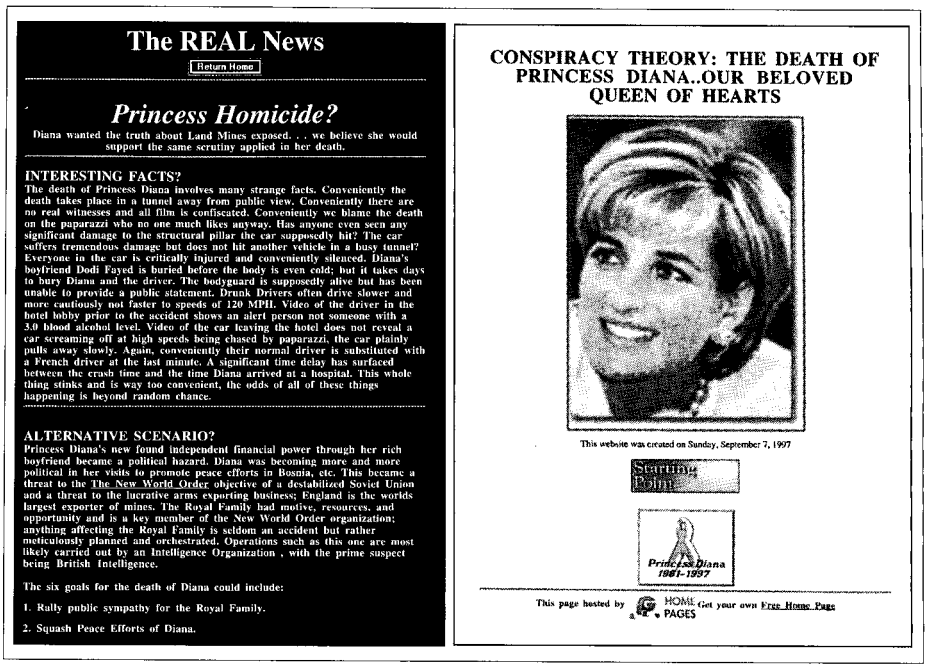
ton, David Brion Davis, and Seymour Martin Lipset and David Raab take up most of this short shelf, supplemented by the investigative work of neutral journalists; now there's Pipes as well.

In fact, this is Pipes's second book on the subject. A Middle East scholar—he is the editor of the *Middle East Quarterly* and the author of many books on the region's politics—Pipes last year released *The Hidden Hand: Middle East Fears of Conspiracy*, a long-overdue, full-length study of paranoia in a region where conspiracy thinking often overwhelms all other forms of thought. (For his troubles, Pipes is described on one hostile Internet site not as being mistaken in his views about the region's politics but as "a leading crusader in the [Z]ionist army who masquerades as an 'expert' on terrorism," a typical example of the region's discourse.)

Pipes's new conspiracy book is an outgrowth of the first one, and in places the two books overlap in text as well as concept. He writes in his introduction that in researching various extremist ideas circulating in the Middle East, he tracked their origins to Europe and America, but that such material didn't fit his first book. It "settled into quiet obscurity on the hard drive" until The Free Press encouraged him to publish the material as a free-standing interpretative essay.

To my surprise, I appear twice in the new book, both times on the basis of a 1992 essay I wrote as a staffer at *The Washington Post*. In the first instance, Pipes quotes—neutrally—two paragraphs of mine that he regards as successfully characterizing the conspiratorial cast of mind. The second reference is polemical. Pipes cites me—fairly—as one among several "pessimists" in my view of the current state of conspiracism. (I had written that there seemed to be hardly any continuing story in the paper that was not dogged by a doppelgänger conspiracy explanation, and expressed concern about the apparently growing appeal of such a worldview.) Pipes describes himself as an optimist on the matter, arguing that the significance of such theorizing is largely in decline.

Pipes's thesis is that conspiracism can be traced to the period of the Crusades, when the two major villains of such thinking began to emerge as figures of evil and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Diana wanted the truth about Land Mines exposed. . . we believe she would support the same scrutiny applied in her death.
INTERESTING FACTS?
The death of Princess Diana involves many strange facts. Conveniently the death takes place in a tunnel away from public view. Conveniently there are no real witnesses and all film is confiscated. Conveniently we blame the death on the paparazzi who no one much likes anyway. Has anyone even seen any significant damage to the structural pillar the car supposedly hit? The car suffers tremendous damage but does not hit another vehicle in a busy tunnel? Everyone in the car is critically injured and conveniently silenced. Diana's boyfriend Dodi Fayed is buried before the body is even cold; but it takes days to bury Diana and the driver. The bodyguard is supposedly alive but has been unable to provide a public statement. Drunk Drivers often drive slower and more cautiously not faster to speeds of 120 MPH. Video of the driver in the hotel lobby prior to the accident shows an alert person not someone with a 3.0 blood alcohol level. Video of the car leaving the hotel does not reveal a car screaming off at high speeds being chased by paparazzi, the car plainly pulls away slowly. Again, conveniently their normal driver is substituted with a French driver at the last minute. A significant time delay has surfaced between the crash time and the time Diana arrived at a hospital. This whole thing stinks and is way too convenient, the odds of all of these things happening is beyond random chance.
ALTERNATIVE SCENARIO?
Princess Diana's new found independent financial power through her rich boyfriend became a political hazard. Diana was becoming more and more political in her visits to promote peace efforts in Bosnia, etc. This became a threat to the The New World Order objective of a destabilized Soviet Union and a threat to the lucrative arms exporting business; England is the worlds largest exporter of mines. The Royal Family had motive, resources, and opportunity and is a key member of the New World Order organization; anything affecting the Royal Family is seldom an accident but rather meticulously planned and orchestrated. Operations such as this one are most likely carried out by an Intelligence Organization , with the prime suspect being British Intelligence.
The six goals for the death of Diana could include:
1. Rally public sympathy for the Royal Family.
2. Squash Peace Efforts of Diana.
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Within hours of Diana Spencer's death, Internet conspiracy mavens would have us believe that the British government had arranged her fatal accident; that Diana was pregnant; or that she was still alive. Daniel Pipes's *Conspiracy* takes the conspiracist mindset seriously.

mystery. The first of those villains was the Jews, who began to be widely perceived not only as deicides but as activist enemies of temporal Christendom. The second was the Knights Templar, Crusaders supposedly turned heretic, who were destroyed as an order for their wealth in the early 14th century, but who are believed by some to have existed in secret for centuries until they eventually transmuted into the Freemasons, alleged sworn enemies of Church, crown, and God. (It is very common, in the enormous literature of conspiracy, to see the Masons characterized as a front organization manipulated by their "real" masters, the Jews.)

The actual work of modern conspiracism, writes Pipes, began in reaction to the French Revolution. Secret societies, including some Masonic lodges, actually had been active throughout Europe in their opposition to the old order. But two authors more or less simultaneously "discovered" that the overthrow of the French monarchy and the course of the revolution was entirely according to a secret agenda. John Robison, a Scot, and Augustin de Barruel, a French cleric, both wrote such accounts. In Barruel's dizzying case, the heritage of those societies was traced to the dimmest antiquity, planting firmly the idea of parallel histories: one history to which we, the gullible masses, are allowed access, but which is largely a sham; and another, secret history which reveals us as the pawns of unseen powers.

According to Pipes's interpretation, such ideas were to be a significant factor in shaping the next century and a half, after which they began to recede. Pipes recounts the major events of the period from 1815 until 1945 in a chapter he appealingly calls "Florescence," addressing such familiar developments as the composition of *The Protocols of the Elders of Zion*, the fear and distrust of the Jesuits, and of "Perfidious Albion" (the sobriquet Britain earned through real and imagined backstage machinations), and the rise of Adolph Hitler on a foundation of conspiracist paranoia.

But he also does something relatively unfamiliar in the course of this discussion: He identifies Leninism as a conspiracist conceit. "The Leninist corpus contains a conspiracy theory at its heart," he writes. Financiers and manufacturers group together not only to control the working class but to control the government, too. That control extends to foreign policy, because of this powerful group's need for cheap raw materials, cheap labor, and monopolistic control of markets. This case was laid out in a 1902 study by English

economist John Atkinson Hobson, notes Pipes, and was a major influence on Lenin.

Of course, it may be argued that Hobson's thesis is at least sometimes borne out by history, that the British themselves regarded their empire as a byproduct of their mercantilism, and that Pipes may seem to be whitewashing such things as America's ugly record in Central America. But Pipes is not necessarily denying—or even addressing—any of this. His point is that Leninism regarded the needs of monopoly capitalism as the sole motive force behind Western actions, a piece of political paranoia that was to meld seamlessly with Stalinist insanity.

"The Left thus reinterprets some of the oldest activities of governments as conspiracies," argues Pipes. "Beginning with collusion among manufacturers, the Left ended up by postulating that all the governments of Europe engaged in conspiracies....Since about 1900, conspirators are thought already to be in power."

By the 1930s, Europe's politics were dominated by conspiracist obsessions, and Pipes introduces the quite useful term of "operational conspiracism" to describe those states, such as Nazi Germany, Soviet Russia, and now Revolutionary Iran, that are or have been governed by conspiracist beliefs. In 1939, the conspiracisms of the "anti-imperialist" left and anti-Semitic right challenged each other for world control, but since 1945, writes Pipes, the power of the idea has ebbed. Though still exerting influence in Eastern Europe and the Middle East, and among the disaffected of all societies, Pipes writes that no great state is any longer endangered by the irrationalities such beliefs can let loose. Democracy and affluence stifle their growth, he argues, maintaining that the whole subject is receding into a historical, rather than a political, matter.

Pipes winds down with a review of the remnants of the tradition, including a chapter in which he argues that contemporary left-wing conspiracism (JFK assassinologists, "October Surprise" believers, Afrocentrism, etc.) has been getting off easy in perceptual terms, because, among other reasons, "The liberal orientation of most scholars and journalists means that they treat comparable phenomena in different ways." His final chapter addresses what Pipes tallies as "Conspiracism's Costs," including a poisoned public discourse and the encouragement of national self-hatred. He also argues, interestingly, that conspiracy fantasists, when in power, end up encouraging the multiplication of real conspiracies.

This is an impressive performance, going beyond historical narrative and attempting to get an interpretative handle on a subject very much in need of discussion and understanding. Pipes has certainly advanced that understanding, particularly in his reconsideration of the left's own conspiratorial reflex, something few of his predecessors have had much interest in doing.

But by characterizing conspiracism in totally mundane terms, as Pipes does throughout his book, he may be understating its essential appeal. I earlier took issue with his comparison of the phenomenon to pornography; there are some related issues worth raising.

Pipes describes his book as "the opposite of a study in intellectual history. I deal not with the cultural elite but its rearguard, not with the finest mental creations, but its dregs....So debased is the discourse ahead that even the Russian secret police and Hitler play important intellectual roles." As an intellectual history, it is indeed a debased discourse. But considered as a history of a kind of occultist thought, it is much more normal. Occultism, throughout its long history, has been concerned with the seeking out of powers otherwise beyond human awareness, and with exploiting or combating those powers. Conspiracism does not equal occultism, of course, but I would argue that the two are closely related. Indeed, they appear to be intimately intertwined, and they intersect at numerous points, from an obsession with the Templars to the ultimate foundation of Nazism itself.

What the two have most in common is a dualist outlook and an understanding of how power is exerted in the world, which is to say that they share a belief in the vast potential power of evil. Full-blown contemporary conspiracists are beyond left and right (Pipes addresses this "fusion paranoia"), positing a Power able to exert its will in virtually any manner. This includes not only such common criminality as murder and financial manipulation, but

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even such extraordinary abilities as command of the weather and effective daily mind control. What matters to such believers is not the obvious implausibility of establishing and controlling the necessary organization to achieve such limitless power. What matters is that bad things keep happening, that all such events may be said to benefit somebody, and that therefore somebody of great power must be capable of performing evil acts at will. That somebody must be studied and identified to be revealed and opposed. Otherwise, the world and its injustices would threaten to make no sense.

Who is that somebody? At various times it has been the Illuminati, the Masons, the Elders of Zion, the Bilderbergers, the Insiders, the Trilateralists, the Jesuits, the Council on Foreign Relations, the U.N., FEMA, the CIA, the World Bank, Wall Street, the cultists of the All-Seeing Eye. These are secular identifications, founded on an Enlightenment-derived awareness of the world and darkly mirroring that epoch's belief in the clockwork nature of the forces governing existence. But these identifications have ancient antecedents. They have much the same teleological role in the mentalities of modern conspiracists as the Demiurge (the imperfect creator of this world) had for the Gnostics of antiquity, and that the Anti-Christ still has for believing Christians.

Pipes's interpretation of conspiracism is not mistaken, but it may be incomplete. He takes pains to argue that conspiracism's history is a self-contained one, without antecedents. And it is true that this particular set of conspiratorial forms has a specific 18th-century origin, from which it proceeds to the present day. The question is whether the frame of mind from which conspiracism itself proceeds has a heritage. And the answer to that question has a direct impact on another matter: whether conspiracism has a future.

Pipes says the phenomenon is receding. In fact, one could argue that conspiracism is a larger factor in the American national discourse today than it has been at any time since the end of World War II, or perhaps ever. No national event of significance—from plane crashes to political suicides to violent federal acts to murder trials to the spread of infectious disease—occurs without broadly disseminated conspiracy theories attaching themselves to it. But Pipes knows that; his case is that it is receding as a *political* factor, thriving only among slumming sophisticates and the disaffected poor and powerless.

Is even this so? The fear of conspiracy is arguably a domestic political factor now. In Washington, D.C., for example, the infamous Marion Barry is back in office thanks in part to the belief in two conspiracies held by many of his constituents: a national conspiracy theory that white prosecutors unfairly targeted black officeholders like Barry (who spent time in jail for drug use), and a local conviction that whites have been conspiring to "take back" control of the city from its black majority.

Full-blown contemporary conspiracists are beyond left and right, positing a Power able to exert its will in virtually any manner. This includes not only such common criminality as murder and financial manipulation, but even such extraordinary abilities as command of the weather and effective daily mind control.

This concentration on conspiratorial factors (regularly validated by local newspaper columnists), rather than on the real failings of the city's leadership, has contributed heavily to the appalling condition in which Washington finds itself. (Recently, the growing number of Spanish-speaking Washingtonians has raised a new specter: a Latino Conspiracy to take over the schools.)

Conspiracism is a marked feature in our national politics as well, with national politicians regularly courting conspiracy-minded constituencies. President Bill Clinton's shameless exploitation of such issues as the burning of black churches and Gulf War Syndrome, after both of these were determined to be chimeras, is evidence of how democracy can accommodate conspiracy: Believers in plots can simply become another voting bloc to capture.

On an international level, Pipes acknowledges that conspiracism retains its force in Eastern Europe and the Middle East. There has been significant suffering in both regions due to conflicts in which conspiracy thinking plays a large role, and there is nothing encouraging in that. Pipes's suggestion that rising affluence will eventually stifle the conspiracy reflex in such places is not unreasonable in itself—a richer populace will have fewer miseries to blame on others. But affluence is hardly a safeguard against irrationality. It is in fact members of the guilt-ridden middle class who have often conceived the century's most destructive forces. Indeed, the same historical event that has excited hopes of rising living standards throughout the world—the end of the Cold War—has also intensified ethnic identifications, and that is just the kind of emotional hothouse in which conspiracism flourishes.

Of course, it will be a better world if Pipes is right. But if conspiracism is indeed an Enlightenment offshoot of the occult understanding of unfairness and injustice—that if evil occurs, an evil power has willed it—then it isn't going anywhere, because it has always been there. Indeed, secularized occultism pervades the modern world in ways we rarely think about, from psychoanalysis (which, as occult historian Peter Washington notes, presents the analyst as a kind of "sensitive" with a sixth sense) to the still-thriving Marxist communications theory (which posits the mass media as powerful mesmerists with their audience in thrall).

As for conspiracy proper, it is and probably will remain the hidden link between mystery and solution, between cause and effect. It offers a world with neither accidents nor unintended consequences, but rather of plans executed by the powerful few at the expense of the victimized multitude. Identify with that multitude, and the central mystery of fate is unraveled. Otherwise, you have to take your chances. No wonder conspiracy's spell is so beguiling.

Charles Paul Freund (cpf@reason.com) is a REASON *senior editor.*

Health Nuts

How Congress kept me from giving my employees Medical Savings Accounts

By John Hood

As a newspaper columnist and a writer for national magazines, I have spent much of my time the past several years advocating medical savings accounts as one solution to the nation's health care problems. MSAs would allow individuals (and participating employers) to put tax-advantaged money into special accounts from which they could pay routine medical bills; major medical problems would be covered by high-deductible, low-premium catastrophic insurance plans. I've absorbed and employed all the standard arguments for MSAs—that the special tax treatment given employer-provided health insurance is distorting the market, that MSAs would increase consumer choice, that they would reduce administrative expenses and simplify medical purchases.

As it happens, I am also the president of the John Locke Foundation, a nonprofit think tank that provides health insurance coverage to nine employees with a wide range of ages and health conditions. If any small business could benefit from the MSA option, you would think it would be ours. But you would be wrong.

When last year's ghastly Kassebaum-Kennedy health insurance bill passed Congress, one item was worth cheering: a test of MSAs in the small-group market. Beginning January 1, 1997, self-employed persons and firms with 50 or fewer employees could purchase MSA-based health insurance policies. These policies can have deductibles of up to $4,500 per family and allow both employers and employees to make deposits into MSAs, from which subscribers can draw to pay for routine medical care. Three-quarters of all money deposited into MSAs is tax-deductible, thus helping to equalize the tax treatment of wage compensation (such as cash or MSA deposits) and non-wage compensation (such as insurance premiums). This is not a "use it or lose it" program: Any balance remaining in an individual's account at the end of the year continues to accumulate.

The MSA program is a test, not a permanent change in policy. The test period is four years, and the number of individuals who can participate is limited to 750,000 nationally.

Depending on whom you listen to, the MSA test has been either a bonanza or a bust. Knowledgeable observers believe that some 100,000 people have chosen MSAs. While that's a lot of customers for a new product—a leading MSA advocate, Golden Rule Insurance, has itself enrolled nearly 30,000 people—it is only a hiccup in the context of millions of potential customers. No one really knows what the long-term trend in MSA enrollment will be, but it is fair to say that MSA advocates (including me) expected a lot more interest at the outset.

MSA opponents have seized on the underwhelming early results of the MSA test to proclaim the concept irrelevant at best. But based on my own experience as a would-be MSA customer, the problem lies not with the idea of MSAs but with the design of the test.

Earlier this year, I set out to look for MSAs for the Locke Foundation. I learned a lot. First of all, talking to insurance agents about MSA plans available in my area was like pulling teeth. Part of the problem is that most independent insurance agents who sell health coverage to firms like mine make their money by taking a commission on the first year of premiums. Since MSAs are combined with high-deductible insurance policies that have correspondingly lower premiums, agents who rely on such commissions aren't likely to be wild about MSAs. Of course, insurers could change their compensation structures to eliminate this disincentive, but that will probably take some time and experience.

Commissions are not the only financial disincentive. Acquiring the information required to sell MSAs is an expense that many agents have apparently not chosen to pay. I discovered that, while some agents may not have liked MSAs in the first place, many others were simply ignorant about them. I found myself explaining the ben-

HENRY PAYNE

efits of MSAs to agents purportedly trying to sell them to me—not exactly a typical buyer-seller relationship.

In defense of insurance agents, however, the limitations placed on the MSA test are probably the main culprit. A product that can be sold only to a limited category and number of customers, and only during a test period, is a product unlikely to interest potential sellers with money to make elsewhere. Not surprisingly, while many large national insurers have come up with MSA products, few have designed serious training and marketing programs to make them competitive.

In my case, I finally found an agent who understood MSAs and could give me some real information about policies and prices. Then I really got a shock. The most competitive alternative would have cost us hundreds of dollars *more* a month than our current insurance plan, which combines traditional deductibles and copayments with a preferred provider network. The reason? Like many small firms in similar circumstances, we are enrolled in a purchasing alliance—in our case provided as a perk of membership in the local chamber of commerce—that allows us to receive price breaks through bulk buying.

The alliance we belong to is made up of about 370 firms and covers some 4,000 workers and dependents in the Southeast. Insurers bid to cover members of the alliance, and we have a choice of winning bidders. The prices we are able to command through this arrangement—which, I hasten to add, is purely voluntary and does not require Hillary Clinton's sanction or aid—are lower than the best price I could find for an MSA plan for our nine-person group. That disparity is part of the plan, it seems: The MSA test rules forbid the creation of analogous alliances.

Another surprise was how MSA plans have to be structured under federal law. Rather than having direct access to a savings account and thus being able to pay directly in cash for routine services, MSA administrators have complete control over disbursements. So even though you are using an MSA, you still have to file a claim with your insurer and wait a while for your reimbursement check. Maybe such a system is inevitable, given the need to guarantee that the tax deduction be taken only for medical expenses, but it certainly takes away a major selling point of MSAs to average consumers tired of playing the claim game with insurance companies.

Even with all the barriers that Kassebaum-Kennedy put in front of MSAs, they will still provide hundreds of thousands of Americans with a new way to purchase health care and save for the future. This is a real achievement, but in order for it to have a broad effect on the health care marketplace some changes are needed. Here are some ideas:

■ *Junk the time limit and the enrollment cap.* The slow start we have seen in MSA enrollment is really an excellent argument for getting rid of the four-year limit and the 750,000 cap on subscribers. Congress should also repeal the enrollment cap of 390,000 on the Medicare MSAs included in the budget deal with President Clinton.

While some agents may not have liked MSAs, others were simply ignorant about them. I found myself explaining the benefits of MSAs to agents purportedly trying to sell them to me—not exactly a typical buyer-seller relationship.

As I noted earlier, it is quite likely that many companies and agents have made the rational decision not to make costly investments in time and resources to market a product with a circumscribed customer base. While many people who follow health care policy closely understand the MSA concept (even if they don't like it), most people I know really don't get it at first. You have to take some time to explain carefully how it would work and how the tax benefits, in particular, may be significant even if they aren't immediately obvious. It is unfair to expect potential MSA vendors to develop cheap and effective ways to market this somewhat complicated product if enrollment is capped and time-limited.

Furthermore, MSA opponents have celebrated too soon about the relatively few people who have chosen MSAs so far. The small number actually weakens their argument for limiting the test. After all, if consumer interest is so tepid, what need is there to cap enrollment to protect existing insurance pools from the mass exodus of young, healthy people that MSA critics worry so much about?

■ *Allow large groups, including alliances of small firms, to choose tax-deductible MSAs.* The logic of allowing only small firms and the self-employed to choose MSAs was never clear to me. Because large employers often have full-time employees devoted to studying benefits and getting the best deals, the subtle advantages of MSAs are more likely to be appreciated there than in small firms where managers (like me) have many other demands on their time. Even so, Congress would fix the problem many other small firms like mine are having by letting purchasing alliances include MSAs without penalty.

■ *Allow all firms, large and small, and individuals to set up "back-ended" MSAs.* Like the so-called back-ended IRAs included in the federal budget deal, back-ended MSAs would scrap the tax-deduction for deposits into savings accounts but allow savings to accumulate tax free and be withdrawn later without tax penalty.

The only real difference from the current tax code would be that investment earnings in these MSAs wouldn't be taxed, so they won't save depositors nearly as much as the "front-ended" MSA would. On the other hand, maybe such a reduced tax benefit could be paired with direct access by depositors to their funds, so they would write checks or swipe debit cards from their MSA at the doctor's office rather than having to file claims and wait for reimbursements.

As my own experience has demonstrated, making MSAs truly a competitive product in the insurance market means more than inserting a limited test into a bill. It means making it clear to employers, workers, and insurers that MSAs are here to stay and available in some form to just about everybody. Any test short of that will be inherently rigged against success. Medical savings accounts, an idea with so much potential, deserve better.

Contributing Editor John Hood (locke @interpath.com) is president of the John Locke Foundation, a state policy think tank based in Raleigh, North Carolina.

Not Ready for Campaign Time

An on-site dispatch from (argh) the 2000 GOP presidential race

By John J. Pitney Jr.

After the long, dreary contest of 1996, is another presidential campaign under way? Have the candidates gathered their troops, stocked their ammunition, and perfected their clichés? Must we already fight the temptation to look for Dr. Kevorkian's phone number?

Relax: The answer is no. The presidential campaign of the millennium is still a long way from getting serious.

That happy bit of news comes from Anaheim, where California Republicans met in late September for their biannual convention. Several potential candidates did show up, but the conventioneers had other things on their minds. Quite sensibly, most of them were focusing on next year's state and local elections, which will have much more impact on their own career plans.

The Republicans seemed genuinely optimistic about the gubernatorial prospects of the state's conservative attorney general, Dan Lungren. California's U.S. Senate race was another matter. Incumbent Democrat Barbara Boxer, a lightweight leftist who makes Ricki Lake look like a model of profundity, ought to be an easy target. Ironically, though, the GOP takeover of Congress may have saved her. Several Republican congressmen, any of whom could have won, declined to run against her because they already had positions of great influence in the House majority. So instead, the Anaheim delegates were looking ahead to a primary contest among a car alarm magnate (a conservative totally inexperienced in electoral politics), the mayor of San Diego (a good campaigner but too liberal for the state GOP), and the state treasurer (a nice fellow but a leaden speaker who, in terms of dynamism, ranks somewhere between Warren Christopher and a turnip).

Candidates for every kind of office were holding cheesy receptions and stalking the corridors with plastic smiles firmly in place. Button geeks were gathering and wearing as much campaign paraphernalia as they could fit on their concave chests. Members of the Young Americans for Freedom were handing out sophomoric flyers and trying to look like the cast of *Reservoir Dogs*. A professional Joan Rivers impersonator was walking around, for no obvious reason. At a buffet sponsored by the Orange County GOP, the lady at the piano started playing the theme to *The Addams Family*, which may have been a comment on the audience.

Sen. John McCain's delivery was so flat the audience never once interrupted him with applause. Dan Quayle still sounds like the shallow figure who has begotten a million bad jokes. Sen. Fred Thompson never gave a compelling reason why he should be president.

Just as the California Republicans seemed unready to think about the next presidential campaign, the quasi-candidates seemed unready to wage it. The first to appear was Sen. John McCain of Arizona, the keynoter for Friday evening's "Pride in our Armed Forces" banquet. The occasion should have been a perfect showcase for McCain, drawing attention to his heroism as a Vietnam POW while allowing him to skip any mention of his wildly unconstitutional campaign finance bill.

Had this event taken place during a real campaign, it would have been a fiasco. The program featured many, many introductions of people in the audience. A lengthy video salute to veterans included a Civil War soldier's last letter to his wife, which also appeared in Ken Burns's Civil War series. The original letter mentioned the solider's hope that his sons would grow to "honorable manhood"; the 1997 GOP version changed it to "children" growing to "honorable adulthood." Score a small surprise win for political correctness.

Even worse, McCain was preceded by the one living American who could upstage him on Vietnam. Dave Roever, who suffered disfiguring burns when a phosphorous grenade exploded in his hand, gave a rousing speech about hope and patriotism. As the hour grew late, he closed by mentioning that his book and video were for sale outside the hall.

On taking the podium, McCain offered the obligatory grace notes, including a good-natured comment that Roever was a tough act to follow. Showing the effects of jet lag, he then lifelessly read a speech about the Reagan legacy. His delivery was so flat that the audience never interrupted him with applause—not even when he repeated Reagan's famous phrase, "Tear down this wall!" That's serious: According to the unwritten rules of Republican etiquette, that line always demands a standing ovation, unless you happen to be at a construction site.

A better delivery would not have helped much, however. McCain's text was heavy on foreign policy and light on crowd-pleasing oratory: "Some critics ask: 'Are we ready to die for Hungary?' Well, we've been ready for some time to die for Luxembourg, because we comprehended the connection between Luxembourg's security and our own." In 1996, Indiana Sen. Richard Lugar used such rhetoric in his campaign for the GOP nomination. He withdrew without winning a single delegate.

The following afternoon, California Gov. Pete Wilson delivered a stronger, more partisan speech. The delegates' lusty reaction prompted at least one Washington-based reporter to speculate about another Wilson presidential race. Although the governor might run, the cheers he won in Anaheim did not have much national

significance. After all, Wilson has served in statewide office for 15 years, so he naturally knows how to push the buttons of California Republican activists. Many of those buttons don't work east of the Colorado River. For instance, Wilson got a standing ovation when he denounced the Democrat-controlled legislature for rejecting Tirso del Junco for another term on the University of California Board of Regents. Del Junco, a former state GOP chairman, is a fine man—but he doesn't have much of a following in Iowa or New Hampshire.

Dan Quayle was the next headliner. "The people are losing freedom to the rapacious appetite of big government," he said, attacking the recent budget deal. "Washington needs to know this: that taxes are the people's money, not the government's money." After addressing a litany of domestic issues, he turned his attention abroad: "And I know that you're not supposed to speak about foreign policy or international security, that people aren't interested in it. Well, as American citizens and as patriots, we'd better be interested in national defense and national security." So far, so good; he was at least doing better than McCain.

But then came something...well, Quayle-like. "This is not like a debate on the budget or on the tax code or on the legal system, or anything else," he said. "This is national security, foreign policy, diplomacy, international relations. That is serious business and has serious consequences if there is an error in judgment." So the budget is not serious business? So bad tax policy does not have serious consequences? What had he been talking about for the previous 20 minutes? Of course, he merely meant that military decisions involve life-or-death stakes, but the words came out wrong.

Quayle has a bigger problem than an unpolished stump speech. Of all the potential candidates, he gains the least by asking voters to ponder crisis management. When Americans ask themselves who should answer the (mythical) "red phone," they think of leaders such as Dick Cheney, Colin Powell, and maybe even Bob Dole. They definitely do not think of Dan Quayle. Although his speaking style has improved over the years, he still sounds like the callow, shallow figure who has begotten a million bad jokes. No political consultant is going to change him in any fundamental way. As coaches like to say, you can't put in what God left out.

Tennessee Sen. Fred Dalton Thompson, by contrast, is an authority figure from Central Casting—literally. His six-foot-five frame and rumbling, no-nonsense voice gained him movie roles as an FBI agent, a CIA director, and chief of staff at the White House. When he spoke at the Saturday evening session, the state party chair said his favorite Fred Thompson movie was *The Hunt for Red October*, in which he played an admiral.

For all his God-given assets, Thompson still lacks something important: a compelling reason why Republicans should want him to be president. As of early autumn, his campaign finance hearings were a political bust, and his support of the McCain-Feingold bill was winning him no friends among conservatives and libertarians. So what did he say? The people "are telling us something. It's much broader than any particular program, position, or even agenda. It has to do with a vague feeling that things are out of touch for the American people. They don't like the direction, they don't like the feel of things. It's vague sometimes." It sure is.

To address this malaise, Thompson offered "reforms" ranging from the large but unspecified (tax overhaul) to the specific but technical (a two-year budget cycle). In short, he sounded very much like Jimmy Carter in 1976. That's one remake Republicans don't want to see. Before the cameras start rolling on the 2000 campaign, Thompson might want to call in a script doctor.

The last maybe-candidate to speak was Sen. John Ashcroft of Missouri, who addressed the Sunday morning session. He started with an affirmation of his anti-abortion stance, which drew loud cheers from about half the audience and polite silence from the rest. He got a more uniform response when he moved on to other issues, repeating his refrain that the welfare state "accommodates your lowest and least instead of challenging your highest and best."

Like the others, Ashcroft spoke of limited government and decentralized power. But also like the others, he failed to come forward with a big, specific idea that would unite the party and rally the voters. What could such an idea be?

After the Ashcroft speech, the delegates voted to endorse the English for the Children initiative, a ballot measure to end mandatory bilingual education programs in California. Fearing a backlash among Latino voters, the state GOP chairman had tried to stop the resolution, but advocates pointed to polls showing that Latino parents overwhelmingly rate English proficiency as the top educational priority for their children. While the debate over bilingual education will have a great impact on California, the issue will have much less resonance in states without large immigrant populations. It will probably not provide the cornerstone of presidential campaigns.

One issue that does reach wide and deep is tax reform. Dan Quayle put it this way: "The tax code has become so complicated, so corrupt, so unfair, that the only sane thing to do is just get rid of it. Start all over again." Many other Republicans are starting to say the same thing, so is there reason for hope? Not so fast. Before smoking those celebratory stogies, supporters of limited government have to remember two things.

First, politicians who talk about scrapping the tax code tend to be suspiciously hazy about what would replace the current system. Steve Forbes, who didn't attend the Anaheim convention, is a noble exception.

Second, we've come this way before. In 1985, President Reagan proposed an overhaul that would make the tax code "clear, simple, and fair for all." The chairman of the Republican National Committee predicted that the Reagan tax plan would boost the party's fortunes by making it the champion of the middle class. By the end of the legislative process, that plan had turned into the very system that Republicans are denouncing today.

As the Good Book says: "The thing that hath been, it is that which shall be; and that which is done is that which shall be done. There is no new thing under the sun."

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Identity Crisis

If the government is serious about keeping illegal immigrants from working, a national ID card may be inevitable.

By Daniel W. Sutherland

Last November, Republican Rep. Robert Dornan lost his Orange County, California, congressional seat by 984 votes. A former test pilot, actor, and talk show host nicknamed "B-1 Bob" could not be expected to step quietly into retirement. The day after the election, the fiery former presidential candidate called a press conference to charge his opponent, Loretta Sanchez, with stealing the election. He claimed there had been widespread voter fraud, that thousands of noncitizens had gone to the polls to support Sanchez.

Little did Dornan know that, in addition to sparking a fascinating congressional investigation, his case would expose fundamental weaknesses in one of the most sweeping programs regulating private employment decisions ever implemented by the federal government. The attempt to document his charges would show that the Immigration and Naturalization Service is not up to the task of making sure that new employees are legally authorized to work in this country. In fact, notwithstanding the reassurances of politicians who back such a verification program, any serious attempt to meet this goal will require some form of national ID card.

Dornan's supporters focused their attention on Hermandad Mexicana Nacional, a company hired by the INS to help immigrants prepare for the citizenship test. The Hispanic advocacy group was paid to teach immigrants a few highlights of American history, explain how our government is organized, and drill them on practice tests. It also did something for which it was not paid: It registered the immigrants to vote. The evidence suggested that several hundred noncitizens may have voted in Dornan's district, the vast majority for Sanchez.

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A pilot project in the 1996 immigration bill will require people crossing the Mexican border to carry a machine-readable card containing such biometric data as retina scans.

Dornan eagerly shared this discovery with his former colleagues on Capitol Hill, and the House Oversight Committee launched an investigation. Committee Chairman Bill Thomas (R-Calif.) came up with a logical idea: Why not compare the INS's list of legal immigrants with the Orange County voter rolls? If more than 984 people appeared on both lists, a new election would be necessary. In late April, Thomas sent a letter to the INS requesting this information.

Thomas's letter put Clinton administration officials in an awkward position. They certainly did not want to assist an investigation that might overturn the election of a new ally, and they were especially reluctant to help a man perhaps best known for loudly challenging the president's integrity and patriotism. Administration officials were tempted to argue that inherent limitations in INS databases prevented them from assisting the investigation.

But claiming that INS databases were unreliable would jeopardize another Clinton administration priority: cracking down on illegal immigration. Under the administration's pilot "employment verification project," an employer who wants to hire someone claiming to be a legal immigrant types information about the applicant into a computer linked to the INS. The INS computer checks the name against its databases and electronically confirms whether or not the person is eligible to work. In other words, at the same time that Thomas was asking the INS to verify the immigration status of new *voters*, the administration was promoting a project that supposedly could verify the immigration status of new *workers*. Even more inconvenient was the fact that the project was being tested at several hundred companies in Dornan's congressional district.

After several weeks of stalling followed by congressional subpoenas, the administration finally settled on a strategy. On May 21, Thomas received a letter from INS Commissioner Doris Meissner, stating that the INS could not confirm the immigration status of new voters. "Since INS

data have been assembled in many places over many years in different formats," Meissner wrote, "a simple electronic match will not produce completely reliable information."

She claimed developing a reliable list of ineligible voters would require INS employees to search both computer and paper files, a process that would take months. The list that Meissner attached to her letter, based on a preliminary review of INS records, was startling: Half a million Orange County voters appeared in the agency's records as noncitizens. A few days later, the INS produced a second list. When both first and last names, along with dates of birth, were matched, more than 18,000 people appeared to be both immigrants and voters. The figures were so ludicrous that Dornan could do little with them.

As if the letter were not embarrassing enough, the agency mistakenly addressed it to "William C. Thomas." As the committee chairman noted at a May 21 press conference, "My mother and father would be shocked, because they named me William Marshall Thomas....If they can't even get my name right, there is a degree of concern about the accuracy of the list."

But the Clinton administration was not about to admit that its employment verification project was a failure. In fact, the White House was preparing to expand the project dramatically. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, a bill promoted by the administration and enacted by congressional Republicans desperate to prove they could govern in a bipartisan manner, requires the project to clear citizens as well as noncitizens. Accordingly, the administration is merging INS and Social Security system databases to create a worker registry—a list of all people who are authorized to work in this country. Armed with this new database, the administration is encouraging companies to make sure that prospective employees, citizens and noncitizens alike, are on the government's list before they begin work.

The law requires that the project be tested in five of the seven largest states. Given the number of people who change jobs or enter the labor force each year, it is likely that the expanded employment verification system will be used millions of times during the next few years. In September 2001, Congress will vote on whether the project should become a mandatory nationwide program. Unimpeded by the admission that INS databases are unreliable, the worker registry is steadily expanding.

The Dornan election challenge is not the first time the nascent national identification program has proven awkward for the Clinton administration. In February 1995, the White House called a meeting of skeptical advocacy groups to convince them of the wonders of electronic verification. A meeting at the White House is a rare privilege, so the representatives of the groups made sure they were in their assigned places at the scheduled time. A White House aide eventually took the podium to explain that Meissner was running late. Ten minutes passed, then 20. Finally, a harried Meissner appeared, a half hour after the meeting was supposed to begin. The activists later learned that the holdup was not a traffic jam or an urgent telephone call: Meissner had been stopped by White House security. It seems the INS commissioner, on her way to make a speech about the effectiveness of verifying a person's identity through a federal computer database, had been late because the White House computer security system would not accept her identification documents. Needless to say, the project gained few new supporters at the meeting.

On the Senate floor, Sen. Alan Simpson predicted that the worker registry would lead to "a more secure identifier," perhaps "some type of driver's license photograph, retina examination like they have done in California."

Administration officials are not the only ones who've been put in uncomfortable situations by the employment verification project. During the House Judiciary Committee's deliberations on last year's immigration bill, Rep. Howard Berman (D-Calif.) introduced a proposal to give the Labor Department several hundred new wage-and-hour investigators. If more investigators were patrolling the nation's factories, he reasoned, there would be less exploitation of both legal and illegal workers. Rep. Lamar Smith (R-Tex.) vehemently argued the standard conservative line: Government interference in American business has been destructive and must be curtailed. He suggested that Berman was just another liberal Democrat who didn't get the message of the 1994 elections. Smith's speech would have been more compelling had he not, only minutes earlier, convinced his colleagues to insert into the bill a plan to make every business in America obtain approval from a federal database before hiring new employees. Berman suggested that his colleague might want to let the ink dry on his national identification project before again decrying the federal government's size and influence.

As Republican supporters of a worker registry prepared their legislative strategy, the most ticklish problem was to avoid the dreaded "national ID card" label. They concluded that the government could reliably verify that people are who they say they are only by assigning everyone a unique and secure number. It would be logical and efficient to issue a card or document with the number printed on it. To guard against counterfeiting, the card would need to be encoded with biometric data such as a fingerprint, retina scan, voice pattern, or blood sample. But the sponsors of the immigration legislation could not admit this is where the law would lead.

Sen. Alan Simpson (R-Wyo.) took every opportunity to reassure the public: "A 'national ID card' is not necessary, and I have always opposed such an approach." Rep. Smith took the same line: "I oppose a national ID card, and that is exactly why the legislation is written the way it is." Those who remained skeptical were told that they didn't need to take the sponsors' word for it; the legislation specifically prohibited the development of a national ID card. Section 404(h)(2) of the bill reads, "Nothing in this subtitle shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card."

But that provision was just window dressing. The law does not prohibit a national ID card; it merely says that nothing in that particular subtitle should be read to encourage one. Pilot projects testing the feasibility of a national ID card were tucked away in other subtitles.

There is, for instance, one to determine the feasibility of issuing all Americans and authorized immigrants a "durable," "tamper-resistant" Social Security card. Another provision requires Americans who live in remote areas near our northern border to hold an identity card that contains biometric information. Under the plan, some northern border stations will be equipped with card-reading machines. When an American tries to re-enter the country after the border station's normal business hours, he will insert his card into the machine. The machine will either take a picture of his hand and compare it to the hand geometry contained in the card, or it will ask him to speak into a microphone so it can compare his voice to a voice pattern encoded in the card. If the machine verifies his identity, the border gate will open. The law authorizes a similar project on the southern border, requiring that "border crossing cards" include "biometric data" that is "machine-readable." The legislation also calls for an investigation of whether driver's licenses could be used as national ID cards.

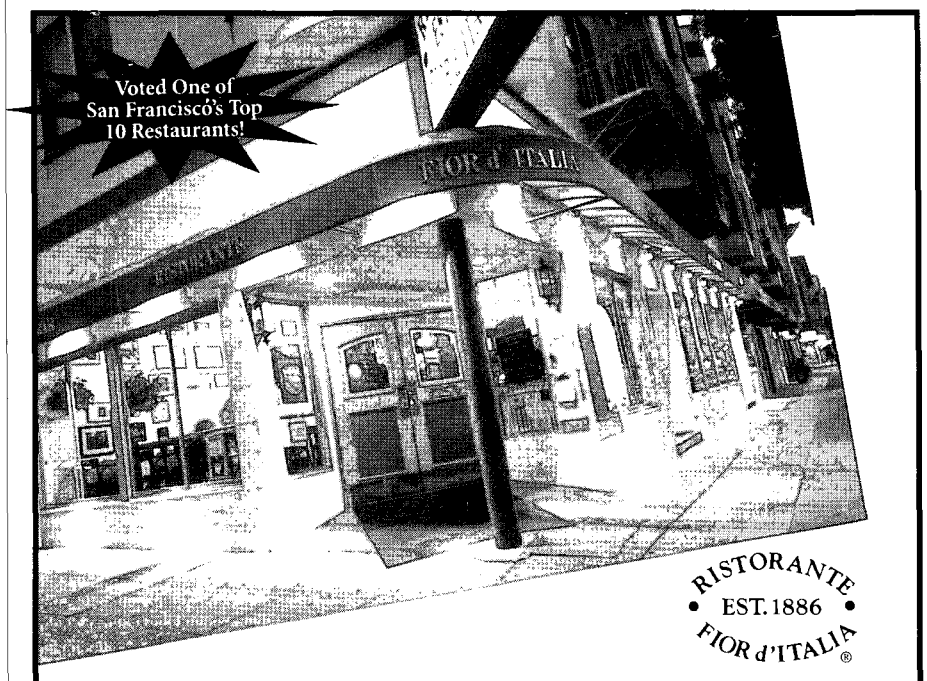
Simpson, set to retire just a few weeks after the law passed, abandoned all pretense when he gave a speech on the Senate floor reviewing his final legislative accomplishment. He candidly predicted that the worker registry would lead to "a more secure identifier," such as "a slide-through card like you use with a Visa when you make a purchase, perhaps some type of driver's license photograph, retina examination like they have done in California." Had Simpson stated during the floor debate that his bill would hasten the day when the federal government will issue an identification card encoded with a "retina examination," the law would have failed by a landslide.

Simpson and his allies clearly believed that Americans are afraid of anything that smacks of a national ID card. Is such a fear justified? When the federal government assembles a comprehensive list of all people residing within our borders, and supplements it with biometric information on each person, it will offer bureaucrats and politicians a tempting tool for all sorts of projects. The Department of Health and Human Services already plans to use a National Directory of New Hires, established by the 1996 welfare law, to enforce child-support payments (See "Kiddie Cops," Citings, page 10); a complete worker registry would enable it to dig deeper. Rep. Stephen Horn (R-Calif.) has introduced a bill that would allow the use of the worker registry to verify new voters. Sen. Dianne Feinstein (D-Calif.) has suggested that parents could screen domestic help by means of "digital voice biometrics" over the telephone. Actor Carroll O'Connor has proposed using a national ID system to monitor drug dealers. Dan Stein, a leading anti-immigration activist, has suggested that a national identifier could be used to monitor gun sales.

Deadbeat dads. Voter fraud. Child abuse. Gun violence. Drug trafficking. And that's just for starters. In Pakistan, the government is considering a proposal that its national ID card include blood group information to assist in AIDS screening. One could imagine social conservatives in this country supporting such an idea. In Kenya, the national ID card lists the bearer's tribe, making it easier for the government to monitor the activities of the president's opponents. Such information might be useful in this country as well—helping affirmative action programs, say. In Taiwan, fingerprints are included on all national ID cards, so the police have a comprehensive fingerprint bank to consult when they investigate a crime. The FBI would certainly welcome the opportunity to develop a similar database.

The promise of a national identification system is that it would make government more efficient and effective. That's also the problem.

Daniel W. Sutherland is a legal scholar with the Center for Equal Opportunity in Washington, D.C. This article is based on "Big Brother Flunks the Test: Monitoring the National ID Program," a report he prepared for the center.



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For Heaven's Sake

Religious accommodation and other openings for big-government conservatism

By Walter Olson

"If I were Fortune—which I'm not," the trio in *The Mikado* very scrupulously begin their reflections on fate. If I were Yale University, I might try to accommodate students who don't want to share dorm facilities with persons of the opposite sex. But of course the real issue in the Yale Five case isn't whether the undergraduate administration should listen to windy Old Blues like me. It's whether federal judges should be setting the dorm rules of a private institution.

Until lately, we knew who to count on to lead the fight against judicial meddling of this sort: our friends on the traditionalist right. Just last fall, some of them were saying court activism had reached such a crisis level as to cast into doubt the legitimacy of the entire American political "regime." Especially at risk, we were told, were "mediating structures" like churches and nonprofits; if courts started forcing these institutions to import into their internal governance the language of entitlement and adversary due process, they could wind up mere branch offices of Leviathan.

So what happened this fall when the Five—all devout Orthodox Jews—made headlines by withholding their dorm fees and hiring a well-connected lawyer to menace the university with a suit? Conservative pundits lined up as a cheering section, and it was left to the mainstream press to seek out less-enthusiastic views. "They knew about the policy coming in. It is a private institution so if they don't like it, they don't have to come here," Yale junior Josephine Coakley told *The Washington Post*. "They are seriously misstating facts about life at Yale," added Michael Whitman. "The statement that they would be required to be in rooms with unclothed women walking around is a misstatement." Whitman, it happens, is the Orthodox rabbi at Yale.

Of course, in general the right still opposes the impulse toward group and ethnic separatism, the turning of quotidian grievances into civil rights cases, and the continual expansion of the sensitivity industry. But it's worth keeping your eye on the steadily growing exception made for "religious accommodation." A few years ago Dolores Stanley, an Ohio manager with the Dairy Mart convenience store chain, complained to the federal Equal Employment Opportunity Commission that her employer's policy of stocking *Playboy* and *Penthouse* (behind the counter, in sleeves) subjected her to religious discrimination and sexual harassment. "It goes against everything I believe in as a Christian," said Stanley. Attorney Benjamin Bull of the Tupelo, Mississippi–based American Family Association backed her case; Bull has since moved to the Pat Robertson–founded American Center for Law and Justice.

The public can and does uphold moral standards all the time by avoiding, deriding, or outgrowing the trashy novel or gory video. But Bill Kristol is asserting the right of some people—Straussian guardians?—to commandeer the government's force to impose their point of view on those who would rent the video or buy the novel.

In recent years several public-interest litigation groups have sprung up to advance the interests of religious believers, sometimes at the expense of others' liberty. The Charlottesville, Virginia–based Rutherford Institute files lawsuits galore urging courts to intervene in the workings of both private and public institutions to expand the scope of required religious accommodation, which not incidentally shrinks the scope of those institutions' authority to run their own affairs as they see fit. Private employers are frequent defendants in the institute's suits.

In one case reported in the Heritage Foundation's *Insider Newsletter* this August, Rutherford's target was the Cincinnati Reds baseball team, which has sought to regulate the kinds of banners its fans can wave from the stands. The Rev. Guy Aubrey had shown up at a game and unfurled a 10-foot bed sheet with the biblical citation "John 3:16." Stadium officials said the banner was against Major League Baseball policy and confiscated it. After Aubrey got a federal judge to strike down the Reds' rule, the team proceeded to replace it with a rule permitting only "baseball related" banners, and Aubrey was soon back with a banner reading "Go Reds—John 3:16." Again officials required Aubrey to surrender the sign ("This is the equivalent of the Rodney King case," Rutherford attorney Jim Knicely told the *Chattanooga Times*) and again, running back to federal court, he got an order requiring another rewrite of the sign policy—a case of federal court micromanagement, plainly enough.

To me, at least, it seems clear that baseball teams have a legitimate interest in keeping fans and television watchers focused on the game itself and not distracted or riled by non–game-related passions. If concern for "quality of life" justifies ridding New York subways of the beggars and pitchmen who scream at hapless commuters, then it's not obvious why we should insist on legal protection, against teams' wishes, for signs reading "There Is No God But Allah—Beat the Cubs" or "Still Believe In Biblical Literalism? Get Real—On to the Series." It even strikes me that the Reds are in much the same legal boat as the Boy Scouts, another group that uses public

facilities but fails to accommodate all shades of religious belief. (Obnoxiously, the Scouts exclude atheists from membership.) I feel comfortable with the idea of letting both the Reds and the Scouts be masters in their own houses, whether or not I agree with them. But apparently many others don't.

It all calls to mind the words of then–appeals court Judge Antonin Scalia on another topic (specifically, he was criticizing the tendency of some on the right to invite what he saw as judicial activism in the cause of property rights and free markets). Scalia suggested the issue poses a "moment of truth for many conservatives who have been criticizing the courts in recent years. They must decide whether they really believe, as they have been saying, that the courts are doing too much, or whether they are actually nursing only the less principled grievance that the courts have not been doing what *they* want."

Those who wanted to observe the anti-libertarian right at close quarters this summer could have done worse than attend the conference on "Homosexuality and American Public Life" held at Georgetown University. The event was graced by such figures as Richard John Neuhaus, Robert George, Robert and Mary Ellen Bork, and many others who are on record as, well, differing from the views often expressed in this magazine. Sponsored by the Roman Catholic–oriented American Public Philosophy Institute, the anti-gay event was notable not only for its epic length (three days—the "stigmathon," I began calling it) but also for an unanticipated fillip in content that surprised at first and then grew familiar by repetition.

After a few of the expected comments denouncing gays and their doings, speaker after speaker and panel after panel went on to propose that the wider and more important wrong to be righted was America's acceptance of artificial contraception among heterosexuals. After all, the panelists kept arguing, contracepted sex, whether between a married couple or not, was morally equivalent to the activities of gays in that it consciously uncoupled sexual activity from the prospect of children. The problem, agreed Catholic conservative Russell Hittinger of the University of Tulsa and numerous others, was the modern growth of the widespread view that adult individuals should be in charge of their sex lives: "I don't think heterosexuals should enjoy these liberties."

Another prominent speaker at the anti-gay conference, and an influential endorser on its brochure, was Bill Kristol, editor of *The Weekly Standard.* Although friends already know better than to get me started on the subject of the *Standard,* I think it apropos to report on Kristol's speech, if only in the spirit of affording equal time to a publication often criticized in this space.

Kristol advised conservatives to prepare for "a very divisive and bitter debate" over the "complex of cultural and social and moral issues" that "increasingly I think are splitting the conservative movement." The designated opponent in this debate will by now come as no surprise. "Libertarians, at least some, have moved to not just a position of 'live and let live' on the whole, but to a more aggressive defense of a kind of pure libertarianism, a denial of the public's right to uphold moral standards."

Stop for a moment and let's try to disentangle this. Kristol, whose training is in political theory, is here purporting to distinguish two kinds of libertarianism: a "live and let live" strain, which apparently has a longer pedigree and is to be viewed as more respectable, and a newer, more aggressive variant that denies "the public's right to uphold moral standards." From my observation of libertarians, this distinction between Goofus and Gallant types of libertarianism strikes me as wholly notional. Most libertarians I know moralize a great deal about such evils as force, fraud, coercion, oppression, and tyranny, and most would sympathize with the "live and let live" formulation, but most would also be likely to insist on a clarification of the vague, dodgy language about "the public's right to uphold moral standards."

The public can and does uphold moral standards all the time by avoiding, deriding, or outgrowing the trashy novel or gory video. But we can all sense that what Kristol is really asserting here is the right of some people—Straussian guardians?—to commandeer the government's force and impose their point of view on others, perhaps more numerous than themselves, who would rent the video or buy the novel. So far as I can tell, both "old" and "new" libertarians dispute such a right.

Borrowing a term from Grover Norquist, Kristol next considered what he calls the "Leave Us Alone" formulation of the Republican or conservative coalition, and firmly rejected it in favor of—his coinage?—"a sort of 'Upholding Moral Standards' coalition....[A serious conservative political movement in this country] cannot simply take the view that, you know, less government is fine. And if only we could get rid of big government all else would be well." In response to a question, Kristol added, regarding political debates over the past 15 years, that the conservative embrace of family values "sort of trumped, I think, with the American people, the left, who were the party of individual autonomy, and individual self-expression, individual rights."

They certainly do try to redefine these things when we aren't looking, don't they? So now it's the *left* that stood for individual rights and individual liberty through the '80s! That surely would have surprised Ronald Reagan. "Most of my speeches have been on the central theme of how government growth restricts individual liberty," said Reagan, circa 1971. "We celebrate the right of each individual to be recognized as unique, possessed of dignity and the sacred right to life, liberty, and the pursuit of happiness....[W]e are here to shield our liberties, not just for now or for a few years, but forever," he said in his 1984 nomination acceptance speech. As *USA Today* summarized his farewell radio speech, Reagan "called himself 'a citizen politician' who 'never meant to go into politics,' but felt he had to 'protect something precious'—individual freedom from government intrusion."

And from Reagan's farewell speech to Congress: "Nothing could be more tragic, after having come all this way on the journey of renewal we began 12 years ago, than if America herself forgot the lessons of individual liberty that she has taught to a grateful world."

That man certainly is missed.

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Kiddie Pawn

Educational TV's hyperlink to smut

By Thomas W. Hazlett

You're smarter than before. C'mon, admit it. You're frothing with intellectual fizz. And so's your kid. You're both mentally healthier, less prone to violence, more concerned about society's forward progress. All since September, when the government's mandate that American TV stations put on three hours a week of educational programming for children kicked in.

Every direct-mail hustler in the charity business knows how to crank the fattest returns from a universe of fund-raising marks: You put an innocent child's portrait on the envelope. Add some splendid scene of squalor and you've got a genuine Kodak moment. The helplessness of a child in the face of raw forces spontaneously evokes our Inner Mom. Nature virtually bellows "Nurture!," and even the grizzliest among us feels the pangs of human tenderness when confronted by the cuddly Poster Boy.

This instinct is so powerful that it has given those who peddle discredited theories of government regulation a new lease on life. Newton Minow, for instance. President Kennedy's selection to head the Federal Communications Commission famously uttered the indictment (in a 1961 speech to the broadcaster's convention) that the entire medium had produced nothing but a "vast wasteland," an entertainment Siberia.

Minow updated his complaint in 1995's *Abandoned in the Wasteland*, where he courageously advanced a frontal attack on the American system of free speech. This despite the grave personal danger: "For half a century," he wrote, "anyone who has questioned the American commercial television system has been shouted down as a censor." But nothing could cow the former commissioner, who held before him an impregnable shield: "I believe the public interest requires us to ask what we can do for our children."

What we can do for our children is regulate TV. And so, the FCC has come to the rescue with beefed-up rules about how much educational programming your local TV station will be required to display as part of its license deal. We should not dwell on the somewhat embarrassing fact that the FCC has ostensibly required commercial broadcasters to perform such public service since even before Newton Minow was its able chairman.

Nor should we pause to consider that, over 35-plus years, this regulatory mandate has been labeled a "joke" several hundred times more often than it has been referenced as a "notable success resulting in the happiness and improved welfare of the little people we call kids." Ignore too that the only certain material impact of the new FCC rules will be many extra zeros in the billable-hour logs that ex-commissioners maintain at their new, post-FCC law firms.

Skip even that the truly exceptional commercial programming that does exist today on Discovery, A&E, the Learning Channel, Animal Planet, Nickelodeon, Disney, and other cable channels once attracted the *ire* of federal regulators—including most spectacularly Minow himself. This was the long-running episode in the 1960s and 1970s in which cable television was quashed in the "public interest" (and, coincidentally, to placate the broadcast lobby—those smokestacks of telegenic "toxic waste," in Minow's words).

Yeah, forget all that. What is truly notable about the "children's television" argument for getting over our obsession with the First Amendment is the thought that America's youth will be improved by watching broadcast's regulation-induced output. Does Junior's mom say to his dad, "Gee, Buck, the kid's just not getting it—if only Fox would bring back that Mr. Wizard guy"? Wouldn't the safer bet be that time spent watching TV is pretty much an intellectual holding pattern?

Don't get me wrong: I'd be the last to underestimate the utility of electronic babysitters, mindless background noise, or—ahhhh—just plain vegging. And any time you cue up the video with the nature shots of the walrus and the hedgehog, I'm there. I have even argued in this very journalistic forum that the social advance wrought by the program niche-dwellers on the cable dial—CNN, C-SPAN, even HBO—is on (or leading!) the right side of history. But the good stuff which people freely watch won't be affected by the government's new rules, which will force—at best—a tiny amount of programming that will attract very few eyeballs (only those attached to people, old or young, who have temporarily misplaced the remote). Else the networks wouldn't have to be bludgeoned to program this fare.

In the end, it's quite all right if government-induced educational shows prove less than mesmerizing. After all, it's hard to imagine a family friend telling young Susie,"Young lady, you're going to have to start spending more time in front of the television. Come on now. It's educational."

The kid-vid initiative may yet bear this sweet but unexpected fruit: If the regulators succeed in dulling down TV, it will drive millions of alert young viewers off the broadcast airwaves altogether. Where will they go? Off to surf the Net, of course, where they will be surrounded by the unspeakable horrors of cyberspace, touted by the disturbed grownups pushing the Communications Decency Act. Our children may be traumatized, but at least they'll be computer literate!

That's a twisted bit of public policy logic, but hey—what do you expect from the gurus running our federal agencies? They grew up on television. ◆

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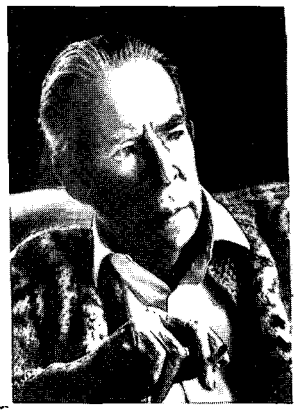

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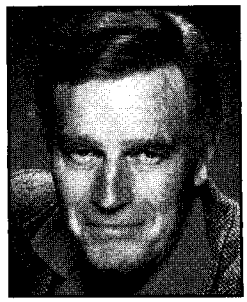

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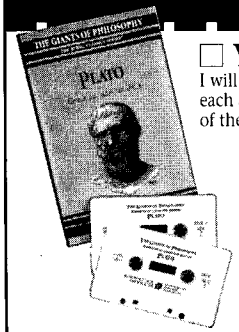

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